

THE IMPLICATIONS OF SANCTIONS RELIEF UNDER THE IRAN AGREEMENT

HEARING BEFORE THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE ONE HUNDRED FOURTEENTH CONGRESS FIRST SESSION ON

ASSESSING THE NATURE, IMPLICATIONS, AND POTENTIAL CON-
SEQUENCES OF IRAN SANCTIONS RELIEF THAT ARE PROPOSED TO
BE PROVIDED TO IRAN IN RETURN FOR THE NUCLEAR-RELATED
COMMITMENTS SET FORTH IN THE JOINT COMPREHENSIVE PLAN OF
ACTION

AUGUST 5, 2015

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WEDNESDAY, AUGUST 5, 2015

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:04 a.m., in room SD-538, Dirksen Senate Office Building, Hon. Richard Shelby, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN RICHARD C. SHELBY

Chairman SHELBY. The Committee will come to order. We have a very important hearing today, and we have a lot of attendants. I will start the hearing off by recognizing my colleague and friend Senator Corker because he is tied up on similar stuff himself.

Senator Corker, go ahead.

Senator CORKER. Well, I just want to ask the first questions.

Chairman SHELBY. Oh, you want to go ahead and ask it now?

Senator CORKER. I will wait.

Chairman SHELBY. You want to wait?

Senator CORKER. Yeah.

Chairman SHELBY. OK. If that satisfies you, that satisfies me.

Much has changed since the Committee held its hearing on Iran and marked up an economic sanctions bill drafted by Senators Kirk and Menendez. Since then, there has been a nuclear agreement with Iran, after numerous delays.

Many serious concerns have been raised regarding this deal, including, first and foremost, whether it would actually prevent Iran from continuing on its dangerous path to a nuclear weapon. And although a new deal has been reached, fundamental problems remain with Iran, the country upon whose assurances the deal rests.

Iran remains the world's leading state sponsor of terror. It remains a serious risk to the national security interests of the United States. It remains a constant threat to the survival of Israel. And despite these grave concerns, it will remain a country with the capability to enrich uranium.

Under these circumstances, I believe it is critical that Congress conduct a thorough review of the agreement as required by the Iran Nuclear Agreement Review Act. As part of this review, the Banking Committee will focus specifically on analyzing the sanctions relief provided in the nuclear agreement and the implications of taking such actions.

There is general agreement that the pressure of sanctions brought Iran to the negotiating table. Congress must consider carefully now the repercussions of lifting those sanctions on our national security and our economic interests.

In recent weeks, many of my colleagues—on both sides of the aisle—have expressed skepticism over several aspects of the agreement. For example, the relief provided to Iran under this deal would allow it to rejoin the international economic system. Over time, this would give Iran the financial means to increase its support of terrorism and regional destabilization.

In addition, the mechanism for reimposing the harshest sanctions, should Iran not comply with parts of the deal, may prove ineffective except in the most extreme cases of violation. Many view it as Iran's "license to cheat," as long as such cheating falls just short of a significant violation of the agreement.

Financial sanctions have become a critical tool of U.S. foreign policy, and they are an important part of this Committee's jurisdiction. In fact, over initial Administration objections, this Committee was instrumental in imposing the sanctions that brought Iran to negotiations in the first place. I believe it is essential for U.S. sanctions law and policy to continue to evolve to meet any new security challenges presented by Iran.

Today the Committee will hear from two panels. On our first panel, we will hear from the Administration's lead negotiator of the agreement and its lead sanctions expert. Following this, the Committee will receive testimony from a panel of experts who have studied the agreement extensively, including officials from the previous Administration.

Senator Brown.

STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Mr. Chairman.

Ms. Sherman and Mr. Szubin, thank you for being here and for your very important public service.

We will hear in the second panel from four witnesses who worked in the Bush administration and terrorist finance and Middle East policy. In fact, this whole process began in the Bush administration with a Republican President who was, in the wake of the Iraq war, willing to engage Iran diplomatically.

As Secretary Kerry observed in Senator Corker and Senator Menendez's Committee the other day, the Bush administration laid the foundation for what became the Iran agreement: sanctions relief in return for strict limits on Iran's nuclear program.

In June 2008, President Bush's National Security Adviser Condoleezza Rice signed a memorandum with the P5+1, which said that, in return for Iran doing key things to limit its nuclear program, the United States was ready to do a number of things: One, to recognize Iran's right to nuclear energy for peaceful purposes; two, to treat Iran's nuclear program like any other non-nuclear weapons state party to the NPT if international confidence in the peaceful nature of its program could be restored; three, provide technical and financial aid for peaceful nuclear energy; and, four, to work with Iran on confidence-building measures to begin to nor-

malize trade and economic relations and allow for civil aviation cooperation. That was Condoleezza Rice's agreement at the time.

This should sound familiar because it was the early outline of the Iran agreement just completed. That is partly why I have been so disappointed—so disappointed—in the politicized nature of the debate on this agreement so far, including from colleagues coming out in opposition to the agreement within hours of its release even though it is over 100 pages long and very dense and complicated to read.

This is one of the most significant national security issues Congress will face in a generation. I say that the most important—this will be the second or first most important vote I have ever cast on foreign policy, second perhaps only or even more important than my vote against the Iraq war a decade-plus ago.

This should not be subject to partisan attacks and political ad wars, even though it has been. Congress should give this agreement the serious debate that it deserves.

We know Iran is a sponsor of terrorism. We know it destabilizes the region. We know it violates the human rights of its people. That is why Western policymakers agreed to separate out and try to secure agreement on this one specific issue. They knew an Iran with a nuclear weapon would be especially dangerous to us, to Israel, and to the region. That was the singular goal of P5+1 negotiations: to keep Iran from getting a nuclear weapon.

Since Iran has deceived the West, verification is key. It is not a question of trust. Of course, we must understand how verification will work.

There are a number of questions: Will IAEA have sufficient resources to conduct inspections, not just at declared sites but at suspicious covert sites? Will our intelligence capabilities be able to detect cheating? Will Iran's breakout time, extended from 2 to 3 months to a year for the next 10 years, will we have time to respond politically, economically, and, if necessary, militarily if Iran makes a break for a weapon?

And, finally, what actually happens if Congress rejects the deal? How would we maintain effective enforcement of our sanctions without the support of our P5+1 allies whose Ambassadors again made clear to a large group of us yesterday that we would be isolated? What happens if a country like China walks away and dodges our sanctions by establishing banks with no correspondent relationships in the United States and starts buying Iranian oil again? What would a rejection in Congress do to the credibility of the United States in the eyes of the rest of the world?

We need answers to these questions and other questions. Some we will hear today; others we have been receiving in classified sessions.

Over the years, I have joined many of my colleagues in supporting round after round of tough unilateral and international sanctions which clearly brought Iran to the table and helped secure this agreement. Some predicted that JPOA would unravel the sanctions regime. It has not. Others worried Iran would not comply or would benefit unduly from sanctions relief. That has not happened.

We have an unusually grave and historic responsibility to assess the consequences, without partisan rancor, without any partisan

attacks, to assess the consequences of this agreement, then to weigh the risks, weigh the benefits of allowing the President and our allies to test Iran's ability to comply with it. Ultimately, while some of us might differ on tactics, it is clear we share the same goals to assure that Iran does not achieve a nuclear weapon, to do that diplomatically if possible, and to recognize that other alternatives remain on the table and are not precluded by this agreement.

Thank you, Mr. Chairman.

Chairman SHELBY. Thank you, Senator Brown.

On our first panel we will hear first from the Honorable Wendy Sherman. She is the Under Secretary for Political Affairs at the U.S. Department of State.

Next we will hear from Mr. Adam Szubin. He is currently the Acting Under Secretary of the Treasury for Terrorism and Financial Crimes.

Both of your written testimonies will be made part of the hearing record today. Ambassador Sherman, you proceed as you wish.

STATEMENT OF WENDY SHERMAN, UNDER SECRETARY, DEPARTMENT OF STATE

Ms. SHERMAN. Good morning, Chairman Shelby, Ranking Member Brown, and Members of the Committee. Thank you very much for this opportunity to discuss the Joint Comprehensive Plan of Action that the United States and our international partners recently concluded with Iran. To reserve as much time as possible for questions, I will only highlight a few key points.

By blocking each of Iran's potential pathways to the fissile material required for a bomb, the deal approved in Vienna ensures that Iran's nuclear program will be peaceful over the long term.

Under the deal's provisions, Iran must remove two-thirds of its installed centrifuges for 10 years, reduce its stockpile of enriched uranium by 98 percent for 15 years, and cap uranium enrichment at 3.67 percent, far below the danger point, for 15 years.

The core of Iran's heavy-water reactor at Arak will be removed and rendered unusable and the facility rebuilt so that it cannot produce weapons-grade plutonium. Meanwhile, spent fuel from the reactor will be shipped out of the country.

I emphasize, as both the Chairman and the Ranking Member did, this deal is based on verification, not trust. Before obtaining any relief from economic sanctions, Iran must meet its major nuclear-related commitments. International inspectors will have unprecedented access to Iran's declared nuclear facilities and its entire nuclear supply chain, from uranium production to centrifuge manufacturing and operation; and if there are suspicious undeclared sites, no sites—no sites—will be off limits.

If Iran fails to meet its responsibilities, we can ensure that sanctions snap back into place, and no country can stop that from happening. If Iran tries to break out of the deal altogether, the world will have more time—a year—compared to the 2 months prior to the negotiation to respond before Iran could possibly have enough fissile material for a bomb. At that point, all the potential options that we have today would remain on the table, but we would also

have the moral authority and international support that comes from having exhausted all peaceful alternatives.

This is also a long-term deal. Some provisions will be in effect for 10 years, some for 15, some for 25, and some indefinitely.

Under the Nuclear Nonproliferation Treaty, Iran is permanently prohibited from pursuing a nuclear weapon, and the access and verification provisions associated with the NPT will remain in place forever, enhanced by the Additional Protocol as a result of the Joint Comprehensive Plan of Action.

The bottom line is that this deal does exactly what it was intended to do when we began formal negotiations nearly 2 years ago. At that point, we faced an Iran that was enriching uranium up to 20 percent at a facility built in secret and buried in a mountain, and was rapidly stockpiling enriched uranium, had installed over 19,000 centrifuges, and was building a heavy-water reactor that could produce weapons-grade plutonium at a rate of one to two bombs per year.

The plan agreed to in Vienna will shrink those numbers dramatically, ensure that facilities can only be used for peaceful purposes, and put the entire program under a microscope.

Some have expressed concerns about what might happen 15 years from now, but without this agreement, as Secretary Kerry and Secretary Moniz have said, year 15 would begin today. And if the United States walks away from the JCPOA, which has been negotiated every step of the way with our international partners, we will be left alone. That would be the worst of all worlds. Iran could push ahead with its nuclear program in whatever direction it chooses. Everything we have tried to prevent could occur. We would not have enhanced transparency, required under the JCPOA, to scrutinize every element of Iran's nuclear program, and the multilateral sanctions regime, which the President and Congress worked so hard to put in place, led by this Committee, would begin rapidly to unravel—along with the Senate Foreign Relations Committee, of course.

As for Iran's behavior, the United States is under no illusions. This agreement was never based on the expectation that it would transform the Iranian regime or cause Tehran to cease contributing to sectarian violence and terrorism in the Middle East. That is why we have made clear that we will continue our unprecedented levels of security cooperation with Israel.

As Secretary Kerry confirmed earlier this week in Qatar, we will work closely with the Gulf States to build their capacity to defend themselves and to push back against Iranian influence that destabilizes the region. We will continue to take actions to prevent terrorist groups, including Hamas and Hezbollah, from acquiring weapons. We will keep in place all of our own sanctions related to human rights, terrorism, WMD, and ballistic missiles. And we will continue to insist on the release of U.S. citizens unjustly detained in Iran and for information about the whereabouts of Robert Levinson so everyone comes home.

I am almost done, Mr. Chairman.

We all know that the Middle East today is undergoing severe stress due to violent extremism, challenged governance, and sectarian and political rivalries. But every one of those problems

would be even worse if Iran were allowed to have a nuclear weapon. That is why the agreement reached in Vienna is so important. None of us can accept a nuclear-armed Iran.

Some have said if we double down on sanctions, we could force Iran to dismantle its nuclear program. But, quite frankly, ladies and gentlemen, Members, that is a fantasy. The whole purpose of sanctions was to get Iran to the bargaining table and to create incentives for precisely the kind of good agreement that we were able to achieve in Vienna.

Over 90 countries have issued public statements in support of the deal. That list includes all of the countries that were involved in these negotiations. Every one of these countries has made tough choices to keep the international sanctions regime in place. We need their support for implementation.

It is important to remember that we tried for many years to get here, as was pointed out. We worked on this on a bipartisan basis. President Obama and this Committee pushed for stronger multilateral sanctions and unilateral sanctions to keep the door open to negotiations. Those sanctions forced Iran to pay a high price, but were not enough to make them change course. That required this diplomatic initiative.

Congress played a critical role in getting us to this point. Sanctions achieved their goal by bringing about serious, productive negotiations. Now Congress has a chance to affirm a deal that will make our country and our allies safer, a deal that will keep Iran's nuclear program under intense scrutiny, a deal that will ensure the international community remains united in demanding that Iran's nuclear activities must be wholly peaceful.

It is a good deal for America, a good deal for Israel, a good deal for the world, and I say to you all, respectively, it deserves your support. Thank you.

Chairman SHELBY. Mr. Szubin.

STATEMENT OF ADAM J. SZUBIN, ACTING UNDER SECRETARY OF THE TREASURY FOR TERRORISM AND FINANCIAL CRIMES, DEPARTMENT OF THE TREASURY

Mr. SZUBIN. Thank you, Chairman Shelby, Ranking Member Brown, and distinguished Members of the Committee. Thank you for inviting me this morning to appear before you to discuss the nuclear deal with Iran, and it is a pleasure to appear alongside Ambassador Sherman.

The global sanctions coalition built and led by the United States across Administrations and with broad bipartisan support in Congress, including from this Committee, gave us the leverage to secure unprecedented nuclear concessions from Iran.

From the start, our purpose in imposing these sanctions was to build the leverage that could be used to obtain concessions on the nuclear file. Our secondary sanctions were meant to be the quid for the nuclear quo.

Our three goals were to close off Iran's paths to a nuclear weapon, ensure we had the access to know if they were cheating, and preserve the leverage to hold them to their commitments and to punish them if there was a breach. The JCPOA obtains these purposes.

On the sanctions side of the deal, I would like to touch briefly on four points that have been much debated: the scope of relief; the snapback provisions; the campaign that is ongoing to combat Iran's support to terrorism, the Quds Force and other malign groups; and, finally our remaining leverage in the event that the United States walks away from this deal.

First, we should be clear in describing what sanctions relief will and will not mean to Iran. If Iran completes the nuclear steps in this deal, which will take it at least 6 to 9 months, the United States will lift our nuclear-related secondary sanctions. The primary U.S. sanctions—our embargo—will still be in place with respect to Iran and still be enforced aggressively. Iran will be denied access to the world's most important market and unable to deal in the world's most important currency.

Our sanctions list with respect to Iran will remain very extensive. We are not relieving sanctions against Iran's Revolutionary Guard Corps, the IRGC, or the Quds Force, or any of their subsidiaries or senior officials. In fact, under this deal more than 225 individuals and companies linked to Iran will remain designated, including major Iranian companies and their financial engineering and transportation sectors.

There has been much discussion of the Iranian foreign reserves that are to be released from foreign restricted accounts under the deal. If Iran fulfills its nuclear commitments, Iran will receive about \$50 billion, not two or three times that much. The rest of what has been inaccessible will remain inaccessible, and with that about \$50 billion, Iran will need to try to address an economic hole that is half a trillion dollars deep. This President Rouhani's central promise to the Iranian people when he ran for office, and he now needs to meet that promise.

Second, on snap back, if Iran does not uphold its side of the bargain once we have suspended sanctions, we can promptly snap back U.S. and U.N. sanctions. Our EU colleagues are positioned to do the same. For U.S. sanctions, this can be done rapidly in a matter of days, and we have the discretion to impose everything from smaller penalties to the powerful oil and financial restrictions. A binary on-or-off snapback would not serve us well, and we have retained maximum flexibility and leverage here. If the sanctions snap back, I want to emphasize there is no grandfather clause. No provision in the deal gives signed contracts special status. Once snapback occurs, any new, prospective transactions are sanctionable.

Third, as we neutralize the most acute threat posed by Iran, its nuclear program, we need to be aggressive in countering the array of Iran's other malign activities. This deal in no way limits our ability to do so. We have made that clear both to Iran and to our partners. This means we will sustain and intensify our use of sanctions against Iran's backing for terror groups like Hezbollah. We will be using our authorities to counter Iran's interventions in Yemen and Syria, Iran's efforts to oppress those who are standing up for human rights in Iran. And we will be using our sanctions to block Iran's attempts to develop their missile program.

Under the interim deal, while negotiations were ongoing, we took action against more than 100 Iranian-linked targets, and we will be accelerating that work in the days and months ahead, alongside

Israel and our regional allies to combat Iran's proxies, to interdict funds moving through its illicit networks. I will personally be focused intensively on these efforts.

Fourth, and finally, let me provide my perspective as a sanctions official on the implications of walking away from this deal. The sanctions regime generated much of its force because the world's major powers, including Iran's closest trading partners and oil customers, agreed on the goal of ending Iran's nuclear threat through diplomacy. It would be a mistake for the United States to back away from this international consensus on the notion that we could feasibly unilaterally escalate the pressure and obtain a broader capitulation from Iran.

U.S. sanctions are extremely powerful. I have seen that firsthand in my 10 years at the Treasury Department. But they are now all-powerful. If the United States were to walk away and ask our partners to continue locking up Iran's reserves, limiting their oil purchases, the coalition we assembled would fray, with unpredictable and risky results. It is difficult to see how a broken international consensus and less leverage would help us to obtain a "much better deal."

Instead, enforcing this deal, securing the far-reaching nuclear concessions Iran has made will capitalize on our carefully built economic pressure and deny Iran access to a terrifying weapons capability for the foreseeable future. And as we move forward, you have my commitment that the dedicated team at Treasury will continue to pursue smart and aggressive sanctions to address Iran's remaining malign activities.

Thank you very much, and I look forward to answering your questions.

Chairman SHELBY. I will yield to Senator Corker.

Senator CORKER. Thank you, Chairman. We have Ms. Romano coming in. Actually, we have four briefings and/or hearings today, counting this one, so thank you very much.

I want to start by addressing the Ranking Member's comments. I could not agree more that this should not be a partisan effort. I could not agree more. I met with Senator Reid on Monday just to talk a little bit about how this debate will take place in September, and I can say to every one of my colleagues on both sides of the aisle, regardless of how people vote on this, you are not going to hear me making comments either way. I think this is a very important vote. What we have tried to do in the Foreign Relations Committee is to make sure that people fully understand the ramifications, so I could not agree more.

I do want to say that one of the details you left out in your letter regarding the Bush agreement was they were not going to agree to enrichment, and that is a detail that has kind of been left out. And I think that is the Rubicon that has been passed here, is that we in essence are—we have three state sponsors of terror that we list: Sudan, Syria, and Iran.

And what this agreement in essence does is it codifies with our approval the industrialization of their nuclear program. I mean, that is a fact. That has not been debated.

I want to say that I think Senator Donnelly, Senator Heitkamp, Senator Warner, Senator Tester, Senator Schumer, and Senator

Menendez all know that I have been very open to supporting an agreement. I had one of the few conversations that I have ever had with Secretary Kerry—I think we all know him well—where I actually thought he was listening to what I was saying on a Saturday. It was interesting. I was standing in my driveway. And I emphasized the importance of these last pieces, and I am talking about the inspections, I am talking about the previous military dimensions—I know it is possible military dimensions; we all know they are involved militarily—and how important that was not just from the standpoint of what it said, but the indication to us that we were really going to apply these things, that we were really going to be tough and make this agreement stand. And when I got the documents—and I have been through all of them extensively—I have to say my temperature rose very heavily. And then when I saw that we were lifting the conventional ban in 5 years, the missile ban in 8 years, and on the front end lifting the missile test ban, on top of what this agreement said, I was very troubled.

Now, I want to just get the sanctions relief, first of all, in perspective. I know you said, Adam, 50—most people have been saying 56, but overall it is about 100. But some of that money is tied up in deposits for activities that are going to be taking place. But, in fairness, it is about \$100 billion. Just to put that in perspective, their economy is \$406 billion. So \$100 billion would be like us getting in the next 9 months \$4 trillion, just relative to our economy. They have all said that over the next 10 years they are going to get \$400 to \$600 billion. That would be like us getting \$17.5 trillion in our coffers over the next 10 years on a relative basis.

But here is the question I have. I was very discouraged with the final round, and I think maybe I showed a little temperature when I went through it and understood it, and I apologize for that. But I worked with Senator Cardin, my friend, I began with Senator Menendez over an excruciating period of time to make sure that the way this agreement worked, the Iran Review Act, we got the documents, and we got them in a way that was acceptable to you all. He spent all weekend with you, the White House, and others on this Iran Review Act. And we were to get all agreements, including the side agreements.

Now, the very entity that we are counting on to do the inspection, we cannot even get a copy of the side agreement that lays out how we are going to deal with Parchin, and I would say to everyone here, if you have not been down to the intel area, you ought to see what Iran is doing today while we are sitting here in Parchin. You should go look at it or get them to bring it to you in the pouch.

We cannot even see the agreement that relates to how we are going to deal with PMD. By the way, all sanctions relief occurs regardless of what they do with PMD. All they have to do, the IAEA has to write a report, but if they D-minus it, meaning they do not tell us much, or if they A-plus it, they tell us everything, sanctions relief still occurs.

So I would just ask Ms. Sherman, after this painstaking effort we went through to make sure we did not ask you to give us documents you could not give us, you knew what the IAEA protocols were, why now will you not give us the documents that exist

that are so important to all of us relative to the integrity of this? Why not?

Ms. SHERMAN. Thank you very much, and thank you, Mr. Chairman, for all of your hard work along with first Senator Menendez and then Senator Cardin on this deal and all your attention to it.

Let me answer your question, but then I want to come back to one other point that you made.

You are about to have the Director General come and meet informally with the Senate Foreign Relations Committee. He made this decision on his own because the IAEA is an independent agency. You made a bipartisan invitation to him, and he agreed to come, and I found out about it about the same time you found out about it. So he did this on his own, and I think it will be very useful and——

Senator CORKER. But why can't we get the documents?

Ms. SHERMAN. I am going to explain. We do not have the documents in the first instance. We do not have them, so we do not have them to give to you. And the reason we do not have them is because they are Safeguards Confidential. And the Director General explained this to you and what that means.

The IAEA does Safeguards Confidential Protocols with the United States, and they do not share them with anyone else, so they do not want to share Iran's with anyone else. You, I am sure, will say to me, "But, Ambassador Sherman, they did tell you about them." And, indeed, they did, and the reason they did is it was in the middle of the negotiation, and they wanted to go over with some of our experts the technical details.

So I did see the provisional documents. I did not see the final documents. I saw the provisional documents, as did my experts. And as you know, there will be a classified, all-Senate briefing this afternoon, and I will go over in detail in a classified setting everything I know about——

Senator CORKER. That you have been told.

Ms. SHERMAN.——these arrangements.

Senator CORKER. So, again, I want to say we spent 4 days going over every detail with the Administration to make sure that the documents we were asking for were ones that could be delivered.

Ms. SHERMAN. And you got every single document we have. Every single one.

Senator CORKER. The entity that we are depending upon for the integrity of this deal, we do not even have the agreement.

Let me ask you this: Do you have any understandings as to whether there are limitations, whether the IAEA actually is going to have physical access inside Parchin to take samples themselves? Would you give that——

Ms. SHERMAN. I will be glad to discuss all of this in a classified session this afternoon. And I will say this, also, Senator, on two other points you made: What Iran must do is give to the IAEA all of the actions and all of the access that they believe is required for them to write their final report on the possible military dimensions of Iran's program. The United States has already made its own judgment about that. We made it in a National Intelligence Estimate that was made public some years ago, and that estimate said publicly that we believe they did have military dimensions of their

program up until 2003. So the United States has already made its judgment, and we stand by that judgment.

What this deal is most focused on is where the program is and where it is headed, and I quite agree, getting access to Parchin is important because it says something about access in the future. And establishing the credibility of the IAEA is also important to this. So I am very glad that the Director General is coming to see you.

I would add one other point, Mr. Chairman, and that is that sanctions, as the Acting Under Secretary said, are absolutely crucial to having brought Iran to the table. But sanctions never stopped Iran's program. When the Obama administration began, there were about 5,000 centrifuges. Sanctions were the most extensive ever during the Obama administration, and yet Iran went to 19,200 centrifuges. So sanctions will not stop their program ever. It is negotiations or other options that will do that.

Senator CORKER. I would just say in closing—and I did not want to take this much time. I would just say to every Senator here this is a big decision. But, Wendy, and Secretary Kerry, every other country, including Iran, knew that because we drafted this Iran Review Act, regardless of what is being said, we were going to have the opportunity to weigh in. We were going to have the opportunity to weigh in.

So when people say it is this versus that, especially on these issues that we have been so concerned about, and when we saw that they were just punted on, negotiated away, issues that we with great sincerity talked with the Administration about, and yet they were just punted on. I think that each of us has to make our own decision based on whether we think this is going to keep Iran from getting a nuclear weapon, regardless of where we feel with the international community. I just want to—I hope at some point on this grandfathering issue—and I will stop. We sent out a document to help everybody. It was nine pages long. And we asked the Administration for red lines. We were able to go—I have got resources with staff and others to go through this agreement, and it is a huge privilege to do that. So I sent out a CliffsNotes to everybody. And there was one question about whether the gold rush that we are all concerned about is going to occur, and that is, people going into Iran immediately to sign contracts. And we use the words “grandfathered contracts,” and you used some interesting words. I guess the question I have—and it is still unanswered. And, by the way, our friends in Britain and Germany and France and the EU have all told me that contracts are grandfathered. Now, they backed off a little bit. There is some confusion around that.

And, by the way, I want to say there is confusion. I think Iran views it the way we had it in this document.

But if someone spends \$1 billion when these sanctions are lifted, let us say BP on an oil facility, and sanctions snap back—by the way, you all realize that in 9 months Iran has the nuclear snap-back, meaning it shifts to them. All of a sudden, if we put any sanctions in place, the agreement clearly states they can walk away. They have all their sanctions relieved, but they can walk

away. So they have what is called a “nuclear snapback.” We have sanction snapback.

But I guess the question is: If somebody enters into a contract over the next year when these sanctions are relieved, everyone expects them all to be relieved in 9 months, again, regardless of what the PMD report says, can that contract continue on—in other words, it was put in place during the free time. Can it continue on if sanctions are put in place afterwards? That is a gray area. I think it is a detail, but I think it does—and I realize it is not the biggest issue. But it does create concerns about people rushing in now to establish contracts, which we see happening right now with Europe.

Mr. SZUBIN. Senator, I do not think that is an unimportant issue. I would not describe that as a detail at all. I think that is pretty central. If you are talking about snapback and the leverage that we have, if companies could enter into contracts and then have them be somehow protected against snapback, then we would have a very weak snapback indeed. And we were intent that we were not going to let that happen.

So what we have—and it is not gray. It is very clear. Iran might want to put some grayness into the issue, but they understand this issue as well. Obviously, when sanctions are lifted, the business that is allowed by that lifting can occur. If sanctions are snapped back, any prospective transactions, on a pre-existing contract or on a new contract, are sanctionable. It is that clear. Our friends in the U.K. understand that, in France and Germany understand that. And if there is any doubt, I want to remove it here today.

Senator CORKER. Could we get a letter from the other parties that agree to that? That would be helpful to us. If you could get the other parties, even including China and Russia, to agree that that is the case, because we are getting very mixed—I think it would just help us to some—at least some people who may still be on the bubble about the issue.

Ms. SHERMAN. If I may just add, I think, Senator Corker, I spoke with Sir Peter Westmacott, the U.K. Ambassador to the United States, this morning—I know he has talked to many of you—and he shared with me an email that I believe he sent to your office about this, and he said, “I want to clarify the E3 position on our ability to apply sanctions to Iran for other activities and for snapback,” and said that, in fact, he is committed and Europe is committed to snapback, and that the EU retains the freedom and ability to apply sanctions for other forms of unacceptable activity.

He also said to me on the phone this morning that he absolutely understands, all Europeans understand, and Helga Schmid, the Deputy of the European Union’s High Representative Office, just had a meeting with all the services of the European Union to affirm this very fact that you question, which is that, indeed, companies have no grandfather clause whatsoever.

Chairman SHELBY. Senator Corker, thank you.

Senator CORKER. Thank you, Mr. Chairman.

Chairman SHELBY. Senator Brown?

Senator BROWN. Thanks, Mr. Chairman. It is important, as Senator Corker and I appreciate, the seriousness and gravitas about this issue, and thoroughness, that he talks that we have sanctions

snapback, the Iranians have, as he said, nuclear snapback, but the military option obviously is always on the table. It is a political agreement that any party can obviously pull out of, just to make that clear.

Again, I appreciate Senator Corker's comments. I do not know that the analogy of what, first of all, the discussion on 50 versus 100-plus, and I want to get to that with Mr. Szubin in a moment. I do not know that analogizing that to the size of our economy is really a very compelling—really gets us anywhere, but that aside, I want to talk about sanctions relief, since this is the jurisdiction of this Committee, the primary area of jurisdiction.

I know you imposed, Secretary Sherman, a pay-for-performance model on Iran in the agreement, and I would like you to discuss generally the steps that Iran will have to go through before receiving any new sanctions relief under the agreement on Implementation Day. If you would walk through that with us.

Ms. SHERMAN. Sure. Iran has to uninstall two-thirds of its centrifuges. It has to get its stockpile down 98 percent, from 12,000 tons to—12,000 kilograms to 300. It must take the calandria, which is the core of the Arak reactor, out and fill it with concrete so that it is rendered unusable. It must set up with the IAEA all of the verification processes. The IAEA will have access to the declared facilities—Natanz, Fordow, and Arak—on a 24/7 basis. There will also be real-time data transmission. There will also be electronic seals so that, in fact, if something is tampered with, the IAEA will know about it in real time. They will put in place what is called a “surveillance of centrifuge production,” which means that rotors and bellows, which are the active parts of a centrifuge. The IAEA will have eyes on that production. That will be for 20 years. For 25 years, the IAEA will have eyes on uranium from the time it comes out of the ground until it is milled, from its mining until its milling, conversion, fed into gas so that they will not be able to divert one ounce of uranium, one portion of uranium. We will always know where it goes. So Iran, in essence, would have to create an entire new supply chain covertly in order to get to a nuclear weapon.

In addition to all of these measures which have to be put in place, Iran has to have taken all of the steps the IAEA requires on PMD. That is supposed to happen, actually, by October 15th, which is around Adoption Day, as opposed to Implementation Day, so even sooner.

All of these things have to take place and all of these are detailed in Annex V of the agreement before there is any sanctions relief whatsoever. At that point, all sanctions relief is lifted. It is not a termination. Termination comes many years later or when the IAEA reaches what is called “the broader conclusions.” The broader conclusions means that they have no undeclared facilities, that, indeed, they can certify that their program is completely peaceful.

Senator BROWN. Mr. Szubin, if you would describe what sanctions remain in place that will help us manage, combat, eliminate as much as possible nefarious Iranian activities and terrorism in the region, and within that answer, if you would talk about the \$50 billion figure, why it is 50 and not 100 in terms of obligations. And,

second, if you would speak to the \$500 billion—you said half a trillion—I think you used the term “hole in the Iranian economy,” what that means in terms of pressure on their government. I assume you are implying to meet some domestic needs, as some of this money is available to the Iranians.

Mr. SZUBIN. Yes, absolutely, Senator. The sanctions regime that remains in place to combat Iran’s malign activities—and I take your question to be referring not just to their support for terrorist groups like Hezbollah, but their support to the Houthis and the ongoing violence in Yemen, their support to Shia militants in Iraq, their support to the Assad regime in Syria.

That sanctions regime fully remains in place, and it is a very extensive one. So it is not just the front companies and the actors and the generals that we have listed so far, but it is an ongoing authority that we have, that the Europeans maintain, and that many of our allies maintain to go after these actors.

Senator BROWN. If I could interrupt, you are confident that our allies stay with us on those sanctions, unlike the suggestions we hear from Ambassadors and others that particularly China and Russia will not be there with the broader, deeper sanctions that are in place now overall.

Mr. SZUBIN. One does need to distinguish. When it comes to Iran’s regional activities, there is a coalition of countries that are highly concerned, that are working alongside us. Increasingly, we are seeing a lot of cooperation from the Gulf countries who, for understandable reasons, are increasingly troubled by Iran’s activities. And I would note and I think it deserves highlighting, you saw Saudi Arabia sanction a number of Hezbollah leaders just a few months back, and in doing so call out Hezbollah as a terrorist organization. The concern is very high.

But our concerns about Hezbollah, I do not want to mislead the Committee, are not shared worldwide. We have not been able to obtain U.N. Security Council resolutions with respect to Iran’s proxies in Lebanon, and I do not think we will see China and Russia stepping up in the way that we have seen our allies in Europe, in Israel, and the Gulf with respect to a lot of these regional interventions.

Senator BROWN. Under Secretary Sherman, the singular goal, as we have discussed, of P5+1 negotiations, just to make sure that Iran did not obtain a nuclear weapon, many of the opponents to this agreement have talked about the dollars that will be available because of the lifting of sanctions and what discord and terror that Iran can sow in the region.

Speak to the broader strategy outside of nuclear issues in the Middle East and sort of where this money goes and what the Administration is doing to combat that.

Ms. SHERMAN. Thank you very much, Senator. Indeed, we share the concerns that this Committee has and the Senate has and our country has about Iran’s activities in the region. Not only will we have all the sanctions tools that Acting Under Secretary Szubin laid out, but as you know, President Obama has provided more security assistance to Israel than any other President. To be fair, every President, Democrat or Republican, has built on the efforts

of the previous President, so each President has increased that assistance. But this President, most assistance.

This President has also commissioned technology that allows us to take actions if we need to in Iran in a way that no President has before and to ensure that we have the options that we need, commissioned and deployed those options.

In addition, as you know, the President had all of the GCC, the Gulf Cooperation Council, to a meeting at Camp David to talk about how to develop security for the region and a regional strategy. That has been followed up with a meeting that Secretary Kerry just had in Doha—in which, by the GCC supported the Joint Comprehensive Plan of Action, believing that if it is fully implemented, it indeed will bring security, more security to the region, because Iran will not be able to project power, will not be able to have a nuclear weapon that acts as a deterrent. But we are focused very much on helping the GCC to better improve its capabilities, whether that is in special forces training, intelligence sharing, having the right armaments to deal with these regional efforts, and really work in coalition.

So I think we are all in common cause. This is quite critical, and we will be following up on a daily basis to make sure that these new strategies, these new efforts go forward.

And, finally, as you know, Secretary of Defense Carter was recently in Israel. We are ready whenever the Prime Minister of Israel is ready to discuss further enhancements to security assistance.

Senator BROWN. My last question, Mr. Chairman. Mr. Szubin?

Mr. SZUBIN. I am sorry, Senator. I neglected to answer—

Senator BROWN. On the \$50 billion.

Mr. SZUBIN. Yes, on the \$50 billion. So the answer is—and we have a high degree of confidence in our figures on this—that it is about \$50 billion. I can get into more detail on itemization in a classified setting, and I know we have a classified session with you and all Members of the Senate later this afternoon.

Senator BROWN. I think that is important to do, so thank you.

Mr. SZUBIN. I would be pleased to. The reason that the \$100 billion figure has been out there—and we have been speaking to it for several years—is that there is \$100 billion of the Central Bank of Iran's foreign reserves that have been inaccessible to it. Some of that has been due to the sanctions, the powerful sanctions that Congress put in place; some of it because it has already been obligated for other reasons; and some of it because it is gone, it has been spent. And so one can list it on the books, but it is just not there.

So, obviously, those latter baskets—the funds that have been spent and are not there, the funds that are obligated and are now in place as collateral—cannot be recovered, even when sanctions are lifted. What remains is this about \$50 billion that can come back to Iran. And with that, one needs to keep the perspective of the about \$500 billion or more that Iran needs to be able to meet really fundamental needs in terms of unpaid military pensions and salaries, in terms of needed infrastructure, in terms of their oil sector, which is crippled.

A final point that I want to add with respect to—

Senator BROWN. How much of that one-half-a-trillion hole would be required for them to get their oil sector up and producing so they can bring the wealth into the country that the Iranians that we all think about and worry about and that they obviously aspire to?

Mr. SZUBIN. Their oil minister has publicly estimated that they require \$160 to \$200 billion just for the oil sector repairs alone. That is not to take their oil sector forward into the future. That is to get it back to baseline, to undo the damage that was done by the sanctions over the last few years.

And across the Iranian economy, writ large, we see about a 7-year lag due to the sanctions, meaning upon sanctions relief, let us say in the middle of next year, the major economic sanctions abroad are relieved, it will be 7 years before Iran comes back to where they ought to be today. If that—

Senator BROWN. Even if they invested \$160 to \$200 billion, it would take them that long?

Mr. SZUBIN. That was not a comment on the oil repairs.

Senator BROWN. I am sorry.

Mr. SZUBIN. The oil repairs might happen in a shorter amount of time, 2 to 3 years. I am not certain. I would need to get back to you on that. What I am saying is if you look at their GDP curve and where it ought to have been, it had this radical break obviously due to this international sanctions effort, and it only gets back in 7 years to where it ought to have been today.

So the hole that they are in really cannot be overstated, and \$50 billion coming back to them does not begin to meet the needs. What is more, that \$50 billion is not spending money. That is all of their freed-up foreign reserves. In other words, no country is going to exhaust its foreign reserves down to zero. It is risking huge instability to do so.

So we estimate that Iran is going to use that money primarily for its domestic economy, and it is going to need to leave some in reserve in the way any country would with its foreign reserves.

Senator BROWN. Last question, Mr. Chairman.

Secretary Sherman, many of us have raised concern about the prospects of the U.N. embargoes in Iran on conventional arms being lifted in 5 years and on ballistic missiles in 8 years. I know all of us would have preferred to retain these embargoes much, much longer. We know Russia and China felt differently. Outline, if you will, briefly—since my time has gone over—what specific U.S., EU, and U.N. legal authorities remain in place to combat Iran's conventional arms and ballistic missile efforts.

Ms. SHERMAN. Sure. First of all, we will still be able to rely on other U.N. Security Council resolutions that levy arms embargoes against key areas of concern in Lebanon, Libya, North Korea, Houthis and Shia, Shia militants in Iraq, *et cetera*. So all of those remain in place. We will continue to work with over 100 countries around the world that have signed the Proliferation Security Initiative to help limit Iranian missile-related imports or exports. The missile technology control regime also remains in place and will play a critical role in that regard.

In conjunction, we have a lot of unilateral, bilateral cooperative tools. We have ongoing sanctions in place, as Adam has pointed

out. We have Executive Orders 12938 and 13382 which authorize U.S. sanctions on foreign persons that materially contribute to the proliferation of missiles capable of delivering weapons, and we will make use of those Executive orders.

The Iran, North Korea, and Syria Nonproliferation Act, INKSNA, levies U.S. sanctions on entities connected to Iranian ballistic and cruise missile activities. And the Lethal Military Equipment sanctions of 2006 provision in the Foreign Assistance Act, the Iran Sanctions Act, as you all well know, as amended, and the Iran-Iraq Arms Proliferation Act all impose U.S. sanctions on individuals and entities.

I would also say that the U.N. Security Council resolution that was just recently passed does not let Iran's ballistic missile program off the hook. The current UNSCR prohibitions on the supply of ballistic missile-related items, technology, and assistance will remain in place. Under this prohibition, states are still required to prevent transfers to Iran of ballistic missile-related items from their territory or by their nationals. They are still required to prevent provision to Iran of technology, technical assistance, and other related services. They are still required to prevent transfers of ballistic missile items that might pass through their territory. They are still required—and I could go on. There are about 10 things that it still continues to require states around the world to do.

So, quite frankly, yes, would we have liked them to go on forever in the U.N. Security Council resolution? Of course. But we have kept them on far longer than either Iran, Russia, or China wanted them to stay on. We have kept them on under Article 41, Chapter 7, which means they are enforceable. And, more importantly, we have other U.N. Security Council resolutions and other tools unilaterally to make sure that where arms are concerned and where missiles are concerned, we can keep moving forward in every way we need to.

Senator BROWN. Thank you, Mr. Chairman.

Chairman SHELBY. Senator Toomey.

Senator TOOMEY. Thank you, Mr. Chairman, and I thank the witnesses for appearing today.

I want to go back to the issue that was raised by Senator Corker. Ambassador Sherman, the Iran Nuclear Review Act of 2015 is abundantly clear, I think, that Congress is supposed to receive all the documentation, all the agreement, all the annexes, all the related materials. It says right in the beginning, referring to the transmission of agreements, "The President shall transmit to the appropriate congressional committees and leadership the agreement as defined in subsection (h)(1), including all related materials."

Subsection (h)(1) specifies that this agreement includes—and I quote the last part of this—"any additional materials related thereto, including annexes, appendices, codicils, side agreements, implementing materials, documents and guidance, technical or other understandings, and any related agreements."

I think it is clear that is meant to be completely all-encompassing, and yet we discover that there is a secret side agreement between the IAEA and Iran, which presumably contemplates the previous military dimensions of Iranian activities, which strikes

many of us as very, very important information to have to evaluate whether or not future activities is in violation of this agreement or not.

Now, Senator Corker asked why you have not given us the document. If I understood correctly, you said, "It is because we do not have the documents." And my question is: Knowing this statute, knowing the intent of the statute and the letter of this law, why didn't you insist that this essential-to-enforcement document be disclosed?

Ms. SHERMAN. Senator, thank you very much for your question. As you point out, we do not have the document, and the U.S. Senate has every single document that the U.S. Government has.

Second, the reason we did not insist is because we want to protect U.S. confidentiality. This is a Safeguards Protocol. The IAEA protects our confidential understandings and our confidential arrangements between the United States and the IAEA.

Now, I know you will say this is a different situation, and I grant you that this is an international understanding to try to stop Iran from having a nuclear weapon, and that is a different circumstance. So in the development of where the IAEA was going. They did come to us for technical expertise, as they came to every other member of the P5+1, and in a classified briefing this afternoon, I will share with you everything I know about this.

Senator TOOMEY. So let me—

Ms. SHERMAN. I am also very grateful that the Director General on his own cognizance is meeting with the Senate Foreign Relations Committee in an informal setting, which is extremely unusual because every other country sort of wonders why he is.

Senator TOOMEY. OK. Did I understand you to say to Senator Corker that you personally did not see the final document?

Ms. SHERMAN. No. What I said is that I was shown documents that I believed to be the final documents. But whether, in fact, there are any further discussions—you know, what this is about, Senator, are the modalities, the technical modalities that the IAEA uses. And I will share with you this afternoon in a classified setting every single thing I know about that, and I think it will give you great confidence that the IAEA is doing what it needs to do.

Senator TOOMEY. Well, I look forward to that, but, frankly, it is still extremely disappointing to me. We are being asked to vote to affirm an agreement that seems to me the enforcement of which depends in no small part on a very important document that not only are we not allowed to see, it is not clear to me that you have read the final document, or anyone else in our Government has actually read it.

Ms. SHERMAN. I have seen—

Senator TOOMEY. And you do not have it in your possession.

Ms. SHERMAN. I have seen the document, as I said, as we were going through the technical discussions with the IAEA. But what is important here, Senator, ultimately what we are talking about here is the credibility of the International Atomic Energy Agency, whether, in fact, we believe that they are a credible, independent verification organization, which it is. They have done a superb job on the Joint Plan of Action, which is the interim step. All of those reports, because we have had to report to Congress on the compli-

ance under the JPOA, have come up here. They have done a very fine job, and I have trust and confidence in their ability to do a fine job on the Joint Comprehensive Plan of Action.

Senator TOOMEY. Well, I am glad you do, but I think that is a document that we ought to have before us.

Let me ask a separate question here. Paragraph 36 of the JCPOA grants to either party the opportunity to walk away from this agreement. Anybody can raise an objection about what the other side is doing. And then after an adjudication process that seems to me lasts about 35 days, if this objection is not resolved to the satisfaction of the complaining participant, then the complaining participant can simply walk away, either side.

So Iran, for any reason that Iran deems to be sufficient, can walk away from this agreement. Of course, that would be after they have their \$50 or \$100 billion, whatever the figure is.

Here is my concern. I am concerned that this dynamic creates a very—this fact creates a very dangerous dynamic, one in which the Administration will have a very hard time enforcing anything other than a massive violation.

You know, former Secretaries of State Shultz and Kissinger wrote a widely read piece some time ago where they suggested that most likely if a violation occurs, it would not be a clear-cut event but, rather, the gradual accumulation of ambiguous evasions.

So let us say we start to discover the gradual accumulation of ambiguous evasions, which strikes me as extraordinarily plausible. If we were to take any measures at all, any enforcement mechanism of any kind, Iran could invoke Paragraph 36, decide that this is unacceptable, and they are walking away. And since this Administration has told us so many times so forcefully that the alternative to this is war and so we have to have this agreement and we had to make all of these concessions after concessions after concessions to get this agreement, why should we believe that in the face of the accumulation of these small but accumulating evasions that the Administration is going to risk Iran walking away from the table? Because I suspect that is pretty likely that that would be their threat.

Ms. SHERMAN. So, Senator, I appreciate that you believe that Iran will have gotten enormous sanctions relief and they will be sitting in the driver's seat, but you seem to forget the other half of the equation. Iran will have reduced their centrifuges by two-thirds. They will have eliminated 98 percent of their stockpile. They will have made the Arak reactor inoperable. They will have allowed inspectors in their country to have 24/7 access to their facilities. They will have—

Senator TOOMEY. 24-day access.

Ms. SHERMAN. No. For the declared facilities—Arak, Fordow, and Natanz—the IAEA has 24/7 access every day of the week, 365 days of the year.

Senator TOOMEY. And the military sites?

Ms. SHERMAN. The military sites, if the IAEA believes there is justification for them going to a site, the Additional Protocol allows them to give 24 hours' notice to get into that site. If the country—in this case Iran—says, "Well, actually, we think you should go to this site," or "We think you should have this document," under the

Additional Protocol they are allowed to suggest an alternative. However, under the Additional Protocol, that debate about what the IAEA can do can go on for quite some time.

So what this agreement did, different than any other arms control agreement ever negotiated, we put a clock on that debate. We said that if the IAEA under the Additional Protocol wants to go to a site, it has to have access to that site. And so we said you can debate with Iran for 2 weeks. At the end of those 2 weeks, the Joint Commission, which is made up of all of us, looks at that. If we believe on day one of the 7 days we have to consider this situation that they ought to give access, if five out of eight of us believe the IAEA should get access—and we believe we will always have Europe and European High Representative with us—Iran then has 3 days to provide access.

So at the most, it is 24 days, but it could be as short as 18 days. And as Secretary Moniz has testified again and again and again, nuclear material cannot be cleansed away. It will be found if it is there.

So, quite frankly, Senator, what we have negotiated in this agreement is absolutely unprecedented access whenever the IAEA believes that it has a suspicious site that it needs access to.

Mr. SZUBIN. Senator, would it be permissible to address the snapback aspect of your question?

Senator TOOMEY. At the pleasure of the Chairman.

Chairman SHELBY. Senator Reed, you are next. Do you want to—

Senator REED. I will take my time and ask Mr. Szubin to respond quickly to Senator Toomey's question. Very quickly.

Mr. SZUBIN. Thank you, Senator. I just wanted to speak to one of the premises that I think is behind your question on snapback.

First, I absolutely agree that the more likely scenario we see is small breach, is a testing, is sticking a toe across the line, and what we need to do then is obviously hit Iran in a proportionate way, show them that those breaches have consequences. Otherwise, we are just asking for larger breaches. And we have to be very serious about that. We have been very clear with our partners that we are going to be very serious about that.

But there is a premise that I have heard circulating that after the initial sanctions relief, Iran can somehow immunize itself to further pressure and, therefore, it will not care about snapback, and that is just simply not the case. Iran's foreign reserves cannot be put in a vault or in a mattress in Iran in the form of gold or bills. If so, they are not liquid, they are not usable.

What Iran needs with its foreign reserves is what every country needs, which is to have them in major financial centers, usable for imports, usable to boost their currency—the whole host of things that countries do with their foreign reserves. That means they are going to have to keep them in foreign jurisdictions where they are subject to snapback. If anything, the more Iran begins to benefit from a deal, the more vulnerable they are to this pressure.

So we need to be very serious, and I agree with your question in that respect. But the consequences to Iran will remain very serious, very severe throughout this agreement.

Chairman SHELBY. Senator Reed, go ahead.

Senator REED. Thank you very much, Mr. Chairman. And within my allotted time, Secretary Szubin, you have testified that you do not expect Iran to stop funding Hezbollah and other proxies, so what will you do to combat this activity?

Mr. SZUBIN. Unfortunately, I do expect to continue to see Iran funding Hezbollah and their other violent proxies, and it is extremely troubling. It is, frankly, what I have devoted the bulk of my career to combating. I have been working 13 years on the terrorist financing portfolio because of how serious of a threat I believe that to be.

We have a lot of tools at our disposal here, and, frankly, one of the most powerful is one that the Congress has given us, which is that when we sanction Iranian terrorist supporters, our designation is amplified internationally. What I mean by that is when we name a Hezbollah financier, a Hezbollah money launderer, any bank worldwide, not just American banks, any bank worldwide that facilitates transactions for that designated entity faces very severe sanctions from the United States, sanctions that no bank wants to face.

And so what we have seen as a practical matter, thanks to those congressional sanctions, is that our sanctions against Iran's proxies carry this international weight, and those designated entities become pariahs worldwide.

But we need to do more and I think it is incumbent on us to do more in terms of additional intelligence targeting, to be able to identify the money launderers, the facilitators, and the funders, and then to muster the coalition of countries who care about this to cut it off, to shut it down.

Senator REED. Thank you. Let me just go to a very critical point here. The sanction regime is in place today. If we reject this arrangement, this deal, some have argued, well, it will not make a difference, the sanctions will stay in place, we can keep it in place. You have been working on these things for 10 years. How would our partners react if we walked away from the deal?

Mr. SZUBIN. From my perspective—and I would certainly defer to Ambassador Sherman on the diplomatic perspective. But from a sanctions perspective, we have tremendous clout, tremendous influence as the United States, as the world's most powerful economy, when it comes to our moral sway, when it comes to our sanctions and economic sway.

I do not underestimate that. I have had the privilege to be a part of exercising that clout for the last 10 years, and I have seen firsthand how effective it can be.

But as I mentioned in my opening statement, it is not all-powerful. We do not simply get to dictate to other countries, especially major economies, what their foreign policy will be. We need to harness shared concerns. When it comes to Iran, we have a shared concern. Four U.N. Security Council resolutions have called out Iran's nuclear program as being a threat, and so when we went to China, when we went to India, South Korea, Japan, to say, "You need to work with us. We have these very powerful sanctions in place. We do not want to use them, but you agree with us that Iran's nuclear program is a threat," they said, "Yes, we do agree with you it is a threat." And we said, "Well, here is the way to

address it. We have got a diplomatic path forward. Join us and let us test it. Let us see if we can use our sanctions leverage to obtain the nuclear concessions we all need from Iran.”

They worked with us, and it succeeded. It succeeded, I think, to a remarkable extent.

In the event that we walk away, it is a very different and much bleaker scenario. The international consensus, as Ambassador Sherman described, is behind this deal; 90 countries have come out and endorsed this deal. We would be alone walking away from it. And in that event, going and asking them to take very costly economic sacrifices in the hope of a future, much better, much tougher deal that I think they would doubt the feasibility of, I think we would have very weak prospects for that.

Senator REED. Thank you.

Mr. Chairman, I think I will stop.

Chairman SHELBY. Senator Scott.

Senator SCOTT. Thank you, Mr. Chairman, and good morning to the witnesses. Thank you all for being here.

I, like so many of us, am very concerned about this deal, not supportive of it whatsoever, and the more I read of the deal, the less I like it, and that does not include the parts that I do not know about, the IAEA side agreements.

Ambassador, you have said a couple of conflicting things this morning from my perspective. Sitting here, I can see your notebooks. I cannot read what is in it. In the final deal from the IAEA, have you seen it and read it?

Ms. SHERMAN. Let me be very clear. I have seen the documents that the IAEA and Iran discussed to create the final arrangements for the modalities that underpin the road map—the road map document being a public document that Congress has a copy of. I was not allowed to keep any of the documents about the arrangements on the modalities that underpin the public road map that you have a copy of.

However, I told the IAEA that, given our Constitution, if Congress asked me to brief on the details that I understood, I would do so in a classified session. And I will do so this afternoon in the all-Senate classified session. I will give you all of the details of which I am aware.

Senator SCOTT. So have you read the final agreement?

Ms. SHERMAN. It is not an agreement. It is a set of arrangements that are made——

Senator SCOTT. Have you read it?

Ms. SHERMAN. I have.

Senator SCOTT. OK. A question for you, Secretary. You stated earlier that the Iranian regime continues to fund terrorism and bad behavior. And at the same time, we are concerned, at least those of us who have commented on the fact that we are concerned, that the more money the Iranian regime has, the more they will fund terrorist activity. In spite of the fact that they have a crumbling economy, they have infrastructure needs, they have needs to repair their ability to sell more oil, yet in spite of all of that, they are still funding terrorism.

And so it seems like to me that you would agree with National Security Adviser Susan Rice when she said that we should expect

that some portion of the money from the sanctions relief will go to the Iranian military and could potentially be used, as you said, will be used to fund more bad behavior and terrorist behavior in the region in spite of the state of their economy.

Mr. SZUBIN. Thank you, Senator. I do agree with the premises of your question. I agree with the statement that you quote from former National Security Adviser Rice. We have seen Iran fund terrorism before the sanctions, through the period, the toughest period of the sanctions. We saw them fund these groups during the Iran-Iraq war when their economy was in shambles.

Senator SCOTT. Yes.

Mr. SZUBIN. And I expect we will continue to see that. The question is: What do we do about it? And it is my office's responsibility, along with our colleagues in the interagency, in the intelligence community, to ramp up our efforts to be able to go after those funding streams.

The alternative, though, that I think is put out there does not make sense to me strategically, which is that we do not enter into a nuclear agreement, we do not give them back their money—in other words, we do not do this exchange of securing a nuclear commitment in exchange for sanctions relief, and then, what? So we will continue to combat Iran's support for terrorism, as we have been doing, but we will have the prospect of Iran 2 to 3 months away from breakout. To me, when you are talking about a state sponsor of terrorism, that is a terrifying prospect. And so we have decided we need to address the nuclear threat and then turn to the terrorism. And I think that is the strategic way to do this.

Senator SCOTT. So, strategically speaking, according to the agreement, 5 years from the start of the agreement they will have more access to weapons, 8 years they will have access to ballistic missiles, and they will be able to move forward in advanced research on nuclear technology, and then we know for certain at the end of the 10th year we are looking at a breakout phase. So the reality of the agreement is that we will with certainty be able to mark on a calendar when the Iranians will have an opportunity for a nuclear weapon.

Mr. SZUBIN. No. As Ambassador Sherman has said repeatedly, at no point, at no future date, not 25 years, not 50 years, does Iran have the ability to pursue a nuclear weapon. In fact, the agreement locks in the contrary. The agreement has varying durations with respect to Iran's enrichment limits, and those are strictest in the first 10 and 15 years and then are reduced. But at no point does Iran have the right to pursue or obtain a nuclear weapon.

Senator SCOTT. We will have to just respectfully disagree. Let me ask one final question. My time is up as well.

In Paragraph 25 of the agreement, it seems to suggest that there will be an effort made to preempt State laws and States who have otherwise passed laws that prohibit companies from investing in Iran. How is this not a violation of States rights? And how do you read Paragraph 25 of the agreement?

Mr. SZUBIN. Thank you, Senator. There is nothing, to my knowledge, about preemption in the Joint Comprehensive Plan of Action. All that the JCPOA says is that we will make sure that State authorities who have enacted legislation, divestment legislation with

respect to Iran are informed of the developments, which I think are pretty key to be aware of, when it comes to the Iran nuclear deal, and that we will encourage them to take those into account as they consider their divestment laws.

Senator SCOTT. And how will you encourage them?

Mr. SZUBIN. Simply by setting forth what this deal is, what it is not. In some cases, those divestment laws were predicated on the nuclear case, and I think for any State authority who is looking at divestment laws based on Iran's nuclear program, you would have to take into account the developments, the historic developments that we are talking about today.

Senator SCOTT. Thank you.

Chairman SHELBY. Senator Schumer.

Senator SCHUMER. I want to thank you, Chairman Shelby and Ranking Member Brown, and I want to thank Under Secretary Sherman and Acting Under Secretary Szubin.

Under Secretary Sherman, I have appreciated through this process your thoughtfulness, intelligence, your candor, your availability in our past meetings. I thank you for many years of service, laudable service to our country.

And Acting Under Secretary Szubin, thank you for being here as well. I look forward to helping remove "Acting" from your title so that we can have you officially at the helm for the daunting challenges our country faces, not only in Iran but around the world.

Now, I have read and reread the agreement. I have had many meetings with people on both sides of the issue, several classified briefings, more meetings to come this week. I am carefully analyzing the proposed deal because its implications are profound and far-reaching. I have had many questions answered. I have not yet reached a conclusion.

This is one of the most important votes I have had to take, any of us will have to take in our legislative career, as Senator Brown mentioned. I owe it to my constituents to make an informed decision. I will not let party, pressure, politics interfere with doing what I think is right. I want to judge the deal on the merits and the merits alone, and in that spirit, I want to ask you questions today.

So one of the questions I have is this, to both of you: Where will Iran be 10 years from now? Now, I know you will say no matter what they are, you have a very good agreement. But I am interested in where Iran will be. Some say, well, look at the people of Iran, they tend to be secular, they have economic needs, they will push Iran in a direction that is more moderate, more welcoming to the world, *et cetera*.

Some say we have had that population for a long time, and this dictatorship, a very totalitarian, evil dictatorship of mullahs, has barely shuddered, even with one transition of power.

So let me ask you how you see these two elements competing. I want your judgment, because this is only a judgment question, but I think a very important one as to where Iran will be 10 years from now. And I would ask you each to answer that question in your respective spheres.

Ms. SHERMAN. Thank you, Senator Schumer, and I thank all Members for the enormous diligence of looking at this deal and try-

ing to ask and answer incredibly difficult questions. The U.S. Senate has been united behind Democratic and Republican Presidents for war, and I appreciate that perhaps we can come united together behind peace.

Where Iran will be in the future, I do not know, Senator. I really do not. I do not think anyone does. Our intelligence community can give and I think probably has given you an assessment of what they believe, but, quite frankly, it is a very complicated situation. The people who turn out on the streets tend to be the young people who are desperate not only for a better life and a stronger rial and a job, but they want to end their isolation. We live in a technologically connected world. No matter what the Iranian regime does, indeed they get on the Internet. They see Twitter. They use all of the devices all of our kids use, and they know what is going on in the world, and they want to be part of it. And I thank the U.S. Senate for their support for programs that have helped break through the Internet so they can get on.

And at the same time, we have a regime led by clerics who have been around for a very long time, have very conservative views—more than conservative; radical—are part of the revolution of 1979, have not let go of that history. The depth of mistrust between us is profound. I do not believe there will be some magic transformation as a result of this deal. For me, this deal is about one thing and one thing only, and that is, making sure that this regime, which does do a lot of terrible things in the region and to its own people, will not have a nuclear weapon that could further terrorize the world and terrorize the region.

I am hopeful, because I am a hopeful person, that a transformation will take place in 10 years. But it may not. So we have to use every tool we have on all of the activities of concern that we have and work with Israel, work with the region to stop those activities, to make sure that those young people have a future at all.

Senator SCHUMER. Do you have anything to add, Mr. Szubin?

Mr. SZUBIN. I do not.

Senator SCHUMER. OK. She is a very hard act to follow.

Mr. SZUBIN. That is right.

Senator SCHUMER. OK. Let me ask you a question. It relates to what Senator Corker talked about, and that is, the retroactivity or the grandfathering of contracts. I want to give you a hypothetical. A country, not the United States, its major oil company, maybe government owned, maybe not, signs a 10-year contract with Iran immediately after sanctions are lifted because Iran has complied with the long list in the agreement. OK?

And then we go—snap back. We find a major violation. We go forward on snapback. It is now year 4 of that contract. I understand that grandfathering will not affect years 1, 2, and 3. The profit that, say, Total, just to use an example, has made in those first 3 years they keep.

Is the contract terminated in year 4 for the next 6 years? Or does the contract continue? And, I mean, this is an important question. As Senator Corker said, it is not the most important question. But we need a yes or no answer.

There was a *New York Times* article where people had different views, and they asked a U.S. Government spokesman, and they

refused to give an answer. So that made me worried. So that is why I am glad you are here to clarify. What happens in years 4, 5, 6, and 7? Is that contract terminated?

Mr. SZUBIN. So I want to be very clear, and I also want to be very careful with my words to make sure I am exactly answering the question.

Sanctions do not terminate a contract. They do not have the authority to annul a contract between parties. What sanctions do, what U.S. sanctions do in that circumstance that you are describing, is they say any future transactions, whether it is future investment by the foreign oil company, future derivation of profits, future expansion, or future just work under the contract—

Senator SCHUMER. Purchase. It could be purchase of oil.

Mr. SZUBIN.—is sanctionable. That is what the sanctions do right now. That is what they have been doing over the last—

Senator SCHUMER. So you have to explain what that means to me in layman's terms. So I am Total, and it is my fourth year, and I am due to send Iran \$1 billion for oil which I want. I still send that oil. That is allowed.

Mr. SZUBIN. No. What it means—

Senator SCHUMER. What does it mean it is "sanctionable"? What happens? Is it your view the sanctions are severe enough that Total will terminate the contract and risk being sued by Iran? I mean, give me the—what does "sanctionable" mean in that situation?

Mr. SZUBIN. Let me spell it out, and it is exactly what the circumstances are right now and what the circumstances have been when we put these tough sanctions into place. There were a lot of pre-existing contracts that were 10-year, 20-year contracts when we put NDAA and CISADA into place.

Senator SCHUMER. That is a good—yes.

Mr. SZUBIN. What companies saw is that they faced the threat of these powerful U.S. sanctions and made the next purchase.

Senator SCHUMER. So, in other words, Total would not be able to do business in the United States if it continued in year 4, for instance? Is that right?

Mr. SZUBIN. There are all sorts of consequences, including—

Senator SCHUMER. Well, answer me that question. Would Total be able to do business in the United States in year 4 if they continue the contract?

Mr. SZUBIN. Total could face a menu of choices under the Iran Sanctions—a menu of penalties under the Iran Sanctions Act, which could include being cut off from the U.S. market. So there is this menu of tough—

Senator SCHUMER. What does "could include" mean? I am sorry. I just want to nail this down.

Mr. SZUBIN. The Iran Sanctions Act has a menu of—

Senator SCHUMER. OK, could. And who has the ability to determine which on the menu is chosen? Is that the U.S. Government unilaterally?

Ms. SHERMAN. If I may, I was in the private sector for a decade, and at the time when these sanctions came into place and Total had to make a decision at that point about whether to leave, the risks were too high for them. Same for Siemens, who actually, to be perfectly frank, was a client of mine at the time, and they had

to leave. They had to unwind those investments. They had to see if there was a force majeure that would allow them to come out. But the risks were too high because, yes——

Senator SCHUMER. And what were those—that is what I am trying to——

Ms. SHERMAN. The risks are they do not have access to U.S. secondary markets. They do not have corresponding banking relationships. Their shipping is at risk.

Senator SCHUMER. And who determines—Mr. Szubin, you said “could.” You did not say “will.” Who determines——

Mr. SZUBIN. The selection——

Senator SCHUMER.——the “could”?

Mr. SZUBIN. So the selection of the penalties with respect to Total in your hypothetical is done at the State Department. The penalties imposed on the bank——

Senator SCHUMER. But solely unilaterally——

Mr. SZUBIN.——would be the Treasury——

Senator SCHUMER.——by the U.S. Government?

Ms. SHERMAN. Yes.

Mr. SZUBIN. That is right.

Senator SCHUMER. OK. That is good. OK. Now——

Mr. SZUBIN. And the only——

Senator SCHUMER.——next—you——

Mr. SZUBIN.——reason I was putting in the caveat at the top about the contract is that, of course, if a contract is signed between a European company and Iran, the contract is not invalidated by U.S. sanctions. What our sanctions do is deter——

Senator SCHUMER. Right, and then Total——

Mr. SZUBIN.——performance under that——

Senator SCHUMER.——just to use an example, would have to make a decision. Does it risk the suit——

Ms. SHERMAN. Correct.

Senator SCHUMER.——by the Iranians because they are violating their contract, given the heaviness of our sanctions?

Mr. SZUBIN. That is exactly right. But we saw how that played out——

Senator SCHUMER. I appreciate the answer——

Mr. SZUBIN.——in 2012.

Senator SCHUMER.——and I think you have answered.

Now, next question. So that is our interpretation, what you just gave, of what grandfathering means. I think Secretary Sherman—what is your title?

Ms. SHERMAN. Yes.

Senator SCHUMER. Secretary. Under Secretary——

Ms. SHERMAN. Whatever.

Senator SCHUMER. Ambassador Sherman. Excuse me.

Ms. SHERMAN. “Wendy.” Whatever.

Senator SCHUMER. OK. You are good by me, whatever your name is, title is.

Ms. SHERMAN. Likewise, Senator.

Senator SCHUMER.——said that a British Ambassador said Britain agreed with that interpretation. OK? Do we have that in writing somewhere that Britain, France, Germany, and the European

Union agree with that interpretation since they are members of the Group of Eight?

Ms. SHERMAN. We do not have a letter to that effect. I will talk with them about that possibility. I want to tell this Committee, though, I had extensive discussions the 27 days I was in Vienna toward the end of this with every single one of our partners, quite extensive, because they all had these concerns, and we were extremely explicit. And the explicitness is the following, which Adam said and I will repeat. We said there is no validity to a snapback provision if there is any form of grandfathering. Then it renders snapback meaningless, and we will not agree to a deal—the United States of America will not agree to a deal where there is not a real snapback provision. That is what we insisted upon, and that is what we got.

Senator SCHUMER. But the snapback has lots of other aspects to it, I understand. I just want to ask you, do Russia and China, do we have any indication that they agree with this interpretation of grandfathering?

Ms. SHERMAN. Yes. We had very, very explicit discussions with them. There is language in the document that talks about prior contracts. But if you read that language very carefully, you will see there is no grandfathering whatsoever.

Senator SCHUMER. OK. And just one other point to make. I suppose if it is a major contract to them, they could just ask that snapback not be put in effect, or they could pull out of the deal. But who knows what—

Ms. SHERMAN. But snapback—

Senator SCHUMER. That is just speculation.

Ms. SHERMAN.—cannot be stopped by any one country. It cannot.

Senator SCHUMER. Yes. No. But they can—let us say it is a huge contract of real importance to the Soviet—to Russia. They could say, “You go forward with snapback, which you have the unilateral power to do; we are pulling out.” They could.

Ms. SHERMAN. They could.

Senator SCHUMER. Who knows if they would, but they could.

Ms. SHERMAN. They could.

Senator SCHUMER. Yes. Thank you, Mr. Chairman.

Mr. SZUBIN. Senator CRAPO.

Senator CRAPO. Thank you, Mr. Chairman.

I would like to address my first questions to you, Mr. Szubin, with regard to sanctions. At this point, the JCPOA has been approved and—submitted to the Security Council and approved by the Security Council of the United Nations, correct?

[Mr. Szubin nods head.]

Senator CRAPO. What impact does that approval have on the sanctions regimes, both the U.N. sanctions regimes and the sanctions of the United States?

Mr. SZUBIN. So it has no impact on the sanctions of the United States whatsoever. With respect to the U.N. sanctions regimes, as I understand it, the endorsement by the U.N. Security Council sets out a timetable right in line with what Ambassador Sherman was describing where Iranian performance, when verified, will lead to the lifting of U.N. sanctions.

Senator CRAPO. And that would be all of the U.N. sanctions on Iran?

Mr. SZUBIN. No. What it would mean—at Implementation Day, when Iran is taking its initial steps and all those key nuclear steps that Ambassador Sherman described would mean that the economic sanctions in the United Nations Security Council would be relieved. The sanctions on their arms trade, the sanctions on their acquisition of ballistic missile technology remain in place for many years to come under the U.N.

Senator CRAPO. And in your opening statement, you made some point about the fact that it would be very hard right now for the United States to back out of the agreement that it has reached and then reimpose a sanctions regime, correct?

Mr. SZUBIN. Senator, what I was referring to is if Congress were to strike down the deal, would we as the United States be able to unilaterally coerce international pressure to be able to secure a much better agreement. I was not talking there about snapback. And the key distinction between those two is obviously Iran is in breach in the second. Iran is defying the international community in the second, and I think we have very good leverage in that case.

Senator CRAPO. Well, that is the question I wanted to ask, because if it is not possible for us to go back and reimplement an effective sanctions regime now, what about snapback? And I understand that snapback is based on an Iranian violation of the agreement. But what about that makes you think that now that the sanctions have been essentially put into the process of being removed, what makes you think that the snapback will work?

Mr. SZUBIN. And that is a question I have spent the better part of 2 years working on. I appreciate it very much, Senator. One of the reasons that you hear us talking about lifting, *viz.*, terminating sanctions is for that exact reason: to ensure that these authorities remain in place, that the structure of the U.N. sanctions resolutions is still on the books, that the EU sanctions are still on the books, and that the U.S. sanctions are still on the books so that they are hovering in suspense and we make very clearly, not just symbolically but legally, that we are in a position very quickly to restore that pressure.

Senator CRAPO. So you believe the fact that we have five other nations agreeing that a violation of the agreement would require a snapback of sanctions means that they would immediately join us if we said that there is a violation of the agreement?

Mr. SZUBIN. Obviously, if we are talking about a scenario in the future of a violation, the key question would be: What is the violation? How material is it? But in the event where we, the United States, view it as a significant breach, we have retained the authority to do so unilaterally, including at the United Nations, even if the other members of the Security Council are not with us.

Senator CRAPO. And you believe that in that case, we could effectively cause the other nations to reimplement sanctions?

Mr. SZUBIN. In the event of a serious breach, I do. What you are talking about then is the scenario we were facing in 2012, where Iran seemed to be on the path toward a nuclear weapons capability, and we won international agreement to impose very tough sanctions to cut off contracts, to pull out of investments. All of

those costly steps were taken because the world, frankly, does not want Iran to have that capability. That is not a U.S.-only priority.

Senator CRAPO. So what I am getting here, though, is that you are talking about an extremely serious violation that would cause the other nations of the world to believe that Iran was, in fact, developing or had developed a nuclear weapon.

Mr. SZUBIN. Yes, Senator.

Senator CRAPO. So we have to get to that level of proof of a violation before we can see an effective reimplementation of sanctions?

Mr. SZUBIN. No. I think what I am saying is that we will obviously want to respond in a proportional way. It is not in our strategic interests to respond to a small breach with scrapping the agreement and trying to put all of the sanctions back into place. I do not think that would have the success that we had over the last few years, and I do not think it would be in our interest to see this agreement scrapped. If we see a small breach, it is in our interest to see Iran cure and to come back into full compliance in a way that we can verify.

Senator CRAPO. All right. Thank you.

Mr. Chairman, I see my time is up. Thank you.

Chairman SHELBY. Thank you.

Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

Let me thank you both for your service. Regardless of my questions, I certainly appreciate your service.

Madam Secretary, is this agreement or war—is that the choice? A simple yes or no.

Ms. SHERMAN. I do not think it is a simple yes or no. Do I—

Senator MENENDEZ. So if you had not—if you cannot give me a simple yes or no as to whether it is either this agreement or war, and since I do not have the unlimited time—so if you had not struck agreement with Iran, would we be at war with Iran?

Ms. SHERMAN. I believe that the chances that we would be down the road to war would go up exponentially.

Senator MENENDEZ. So you are saying compared to other witnesses who have served in the Administration in the past, who support the agreement before the Senate Foreign Relations Committee, and have been asked the same question, they have unequivocally, easily said no, it is not this or war. So you have a view that it is this or—

Ms. SHERMAN. As I just said to you, it is not binary, Senator.

Senator MENENDEZ. Further down the path—

Ms. SHERMAN. It is not binary—

Senator MENENDEZ.—a year from now, 2 years from now, 3 years—

Ms. SHERMAN. I do not—you know, I do not think any of us can predict the future in that way. What I will say—

Senator MENENDEZ. Well, that is the problem.

Ms. SHERMAN. What I will say—

Senator MENENDEZ. The Secretary of State has come before various Members of the Senate—

Ms. SHERMAN. Yes.

Senator MENENDEZ.—and said it is either this or war. I think that is—

Ms. SHERMAN. Yes, because——

Senator MENENDEZ.——a binary statement.

Ms. SHERMAN. And the reason, Senator, is because sanctions have never gotten rid of their nuclear program. It has only brought them to the table. And so——

Senator MENENDEZ. But that has not——

Ms. SHERMAN.——if we——

Senator MENENDEZ.——created war either.

Ms. SHERMAN. If we walk away from this deal, Iran will begin marching forward with their program further, as they have done over the years, and the President of the United States has said he will not allow them to obtain a nuclear weapon——

Senator MENENDEZ. Well, I think there is real doubt——

Ms. SHERMAN.——and that leaves you with only one option.

Senator MENENDEZ. I think there is real doubt, including——

Ms. SHERMAN. That only leaves you with one——

Senator MENENDEZ.——if you were to get an intelligence briefing, I think there is real doubt that Iran believes that a credible military threat of force is on the table.

Let me ask you——

Ms. SHERMAN. I do not agree with that at all.

Senator MENENDEZ.——this: On page 26 of the agreement, it says:

The United States will make its best efforts in good faith to sustain the agreement and to prevent interference with the realization of the full benefit by Iran of the sanctions lifting specified in Annex II.

Which is basically, for the most part, the U.S. sanctions.

The U.S. administration, acting consistent with the respective roles of the President and the Congress, will refrain from reintroducing or reimposing the sanctions specified in Annex II that has ceased applying under the [Joint Comprehensive Plan of Action].

Now, I tried to get this from the Treasury Secretary, and he did not give me an answer. The Iran Sanctions Act that I was one of the authors of expires next year. Do we have the right to reauthorize those sanctions now or at any given time? Yes or no.

Ms. SHERMAN. I believe, Senator, that it does not expire until the end of next year, and it is premature to have that discussion.

Senator MENENDEZ. OK. So here we go again. We either have the right or we do not have the right. Having a question of prematurely discussing something does not answer the question of do you understand the agreement is that we have the right or we do not have the right?

Ms. SHERMAN. We said in this document that it recognizes the Constitution of the United States. The U.S. Congress has the right to do whatever it wants to do within its authority. So in that case, you do have the right. What we are saying is it is premature—we would urge that it is premature to make that decision——

Senator MENENDEZ. Well, if you are going to snap back, you got to snap back to something. And if the Iran Sanctions Act, which this Administration on various occasions has credited as one of the significant elements of getting Iran to the negotiating table, if they do not exist after next year, there is nothing to snap back to in that context. So——

Ms. SHERMAN. We believe there is a way forward in that regard.

Senator MENENDEZ. Well, let me then just read to you what your partner in this deal said in a letter to the Security Council dated July 20, 2015. The Iranians said:

It is clearly spelled out in the Joint Comprehensive Plan of Action that both the European Union and the United States will refrain from reintroducing or reimposing the sanctions and restrictive measures lifted under the Joint Comprehensive Plan of Action. It is understood that reintroduction or reimposition, including through extension of the sanctions and restrictive measures, will constitute significant nonperformance which would relieve Iran from its commitments, in part or in whole.

So your partner in this regard believes that, in fact, if we were to—if Congress were to go ahead and reauthorize, which I think most members believe that it is still going to exist, I think most members considering this agreement, Mr. Chairman, believe that the Iran Sanctions Act is still going to exist, as something, with all the waivers the President has, as something that, in fact, will be reverted back to if the Iranians violate, and it is a form of deterrence.

And so either sanctions work or they do not. Either they are a deterrent or they are not. And if they are not, then the agreement is really based on the hope over the course of 10 years, or 13 as the President said in his NPR interview, that, in fact, there will be performance by the Iranians, that they will not violate, and then with no sanctions in place, that, in fact, the only choice you have is a very limited window in which you will have to act possibly militarily for the next President of the United States.

So, Mr. Szubin, let me ask you this: Isn't it true that whenever we have imposed sanctions, we have given countries and companies and individuals sufficient notice for them to divest themselves of the sanctionable activity?

Mr. SZUBIN. No. What I would say, Senator, is when we have imposed major sanctions that affect sectoral behavior or major investments, we have typically built in a wind-down period, a short wind-down period—so that could be 60 days, 90 days—in order to—

Senator MENENDEZ. It has often been 6 months, has it not?

Mr. SZUBIN. In some cases it has been 6 months.

Senator MENENDEZ. OK.

Mr. SZUBIN. But typically that is longer. We want—

Senator MENENDEZ. So if it is 6 months and you have a 1-year breakout time, although David Albright, in testimony before the Senate Foreign Relations Committee, a physicist, a former weapons inspector, and the head of the Institute for Science, said that they believe their calculation of potential breakout time under one scenario is 6 to 7 months. That is a heck of a lot less than 1 year.

So the time period of potential re-enactment of sanctions, which the Administration argues both ways—it will not get Iran to do what we want it to do; at the same time you say this is our defense, it is snapback. It is either one or the other.

I just do not see how, in fact, we have the wherewithal under this agreement. Your partner says that, in fact, there is no way that they will respect that in terms of they will be able to get out of the agreement, and we will be back to point zero. When they choose to do that, which is why you are all reluctant to go ahead and acknowledge that there should be a reauthorization of the Iran Sanctions Act because then they may very well walk away, and if, in fact, they are going to walk away simply by the existence of

sanctions that do not go into effect unless there is a violation in the future, you have to worry that what they are doing is buying for time.

And the last point I want to make, you know, sometimes what is past is prologue. And I just want to read some excerpts from a hearing when I was pursuing the Iran Sanctions Act when the then-Chairman of the Senate Foreign Relations Committee, now the Secretary of State, was actually arguing against the sanctions. So I guess, you know, in this respect, things have not changed. He went on to say that:

Rather than motivating these countries to join us in increasing pressure on Iran, they are most likely to resent our actions and resist following our lead, a consequence that would serve the Iranians more than it harms them. And it could have the opposite effect than was intended and increase the Iranian regime's revenue.

And then you were quoted, Secretary Sherman, as, in fact, also buying into that point of view, and if you look at the transcript of the hearing, basically what it talks about is everything we have heard here, that we will break the coalition, that, in fact, we will be isolated, that, in fact, we will be alone, and that, therefore, we will not have the consequences against Iran. And the problem is when you cry wolf one too many times, it really is problematic.

And so based upon a history here which says, no, those sanctions should not be imposed because if they do, we will lose the coalition, now listening to if this agreement is not accepted we will lose the coalition, saying—unwilling to say that the Iran Sanctions Act should be reauthorized, which I think every member believes is going to exist as a deterrent, and then saying there is a deterrence or no deterrence, that is hard to understand.

And the final point I would make, Mr. Chairman, this Iranian regime cares about two things: preserving the regime and the revolution. They are not going to enter into any agreement that does not preserve the regime and the revolution. And so they must think this is a good agreement for them ultimately to accomplish that goal. And that is worrisome. That is worrisome.

So I understand the hope that the agreement implies and that they will perform. But when they do not perform, I do not think we are going to be in a better position at that time, and that is my concern.

Thank you, Mr. Chairman.

Chairman SHELBY. Senator Sasse.

Senator SASSE. Thank you, Mr. Chairman. Thank you both for being here.

Ambassador Sherman, I wonder if you can help me understand what you think the Congress is actually voting on. Whether or not Congress would kill the deal, does that matter in any way to the Iranians? Or are they already guaranteed all the benefits of what has been negotiated today?

Ms. SHERMAN. Well, of course, they are not, Senator.

The U.S. Congress has the authority and the right under our Constitution and under the Corker-Cardin legislation to, in fact, review this and to vote a resolution of disapproval. The President of the United States then has the right and the authority to exercise his veto if he wants, and I would expect that he would. And then

the U.S. Congress has the right to try to override that veto. That is how our system works.

I would hope that the U.S. Congress would not override that veto because I believe that the Joint Comprehensive Plan of Action is the most profound, the most far-reaching arms control agreement ever negotiated and that indeed it will keep this country, Israel, and our allies safer.

Senator SASSE. Thank you. But what I am asking is: If the Congress did override that veto, why would it matter to the Iranians? What would they lose?

Ms. SHERMAN. They would lose an opportunity to have sanctions relief. They would lose the opportunity to end their isolation from the rest of the world. They would lose their opportunity to come into the community of nations.

Now, they may not care about that, and what I would expect if the U.S. Congress overrides a Presidential veto, which I would not expect to have happen because I believe that this Congress has united behind Democratic and Republican Presidents for war, and I would expect in the end they would unite behind a Democratic President or a Republican President for peace, and that is what this deal is about, not having to go to war, but ensuring that Iran does not get a nuclear weapon.

Senator SASSE. I agree with you that this should not be a partisan issue. But isn't it the case that the Administration is arguing to undecided members that we have already lost the international community, and so if the United States does not act, if we do not go forward with your deal, the Iranians are going to get this relief anyway? If not, isn't that an answer to Senator Menendez's question, and, frankly, it is what the President and Secretary Kerry were saying 3 or 4 weeks before July 1st, that it is not a choice between this deal and war, but that there are other scenarios where sanctions could have an effect? I think you cannot have it both ways.

Ms. SHERMAN. Yes, I understand that. The issue is what kind of effect, how far-reaching an effect, and whether that will stop their nuclear program. So is it true that our unilateral sanctions could be put back in place and continue on? Is it possible that the rest of the world—maybe not Europe; Europe may follow through because they are allies and partners of ours—but other parts of the world that have taken huge economic costs by stopping their importation of Iranian oil or taken huge costs by other ending of trade with Iran would not pay attention to our unilateral, bilateral sanctions? Yes, that is indeed the case.

So our sanctions regime would not be as effective as it would be. There would not be—the international community has come together behind this deal. They will not stay together behind our alone rejecting this deal if the U.S. Congress overrides the veto. The United States will be in a weaker position not only on this, Senator, but on many other things that we are trying to do internationally in the world.

Senator SASSE. But just to be clear, it is your position that if the Congress would kill this deal, the U.S. sanctions regime could still have some significant effect?

Ms. SHERMAN. It would have some effect. I would suspect so, yes. But it will not have the effect that it does today, and everyone has to remember that Iran will then move forward with its program, that sanctions, as devastating as they have been and, as I would say to Senator Menendez, and hope it shows in the record, that indeed this Administration has enforced both unilateral and multilateral sanctions even more profoundly than every previous Administration, each of which has tried to do a very good and credible job, but we have intensified that. That is what President Obama set out to do, was to intensify that sanctions pressure so that Iran would come to the negotiating table in a serious way to get the most profound and far-reaching arms control agreement that has ever been negotiated.

Senator SASSE. Thank you, and I do appreciate your advocacy for the agreement. But I think this was the yes-or-no answer that you just gave to the question that Senator Menendez asked. You do not believe that it is war or this deal. You just outlined a third scenario. You—

Ms. SHERMAN. Yes, but—

Senator SASSE.—would not answer yes or no for him, but I think you just—

Ms. SHERMAN. No, but—

Senator SASSE.—said yes, it is not.

Ms. SHERMAN. I did not, Senator, because a third scenario is even though our sanctions would have some bite, Iran would move forward with its nuclear program, because why wouldn't they? They would not be getting the relief, all the relief they wanted. They would keep marching forward with their program. And it would force us into a choice: Were we going to allow them to have a nuclear weapon? And President Obama is resolute. He will not allow that to happen. And that leaves you heading down a road to war.

Senator SASSE. Thanks. Almost at time, but, Secretary Szubin, I want to ask you one question. You and I have had previous discussions, and you know that I appreciate the work that you do, and I know that we have mutual affection for one of your predecessors, Secretary Zarate. I do not know if you have read his testimony today. I will not quote the whole length of it, but you said in your opening statement that the IRGC receives no sanctions relief under this deal. Is that correct?

Mr. SZUBIN. Yes.

Senator SASSE. The Secretary in his testimony in the second panel is going to outline much of what he calls their "business empire" that is driven by the IRGC. Most of those entities do receive sanctions relief under this deal. So isn't your point really fairly meaningless that they do not receive sanctions relief since all the entities that they get their money from do?

Mr. SZUBIN. No, Senator. On this point—and maybe it is the only one—I would respectfully beg to differ with former Assistant Secretary Zarate. The business empire of the IRGC will remain under sanctions. That means the companies that it controls, that it is deriving revenue from, will remain under sanctions, and certainly, obviously, its senior officers will remain under sanctions as well. And thanks to Congress, that will have international effect, meaning

any international bank that does business with that—and let me give a very specific example here.

Khatam al-Anbia, the largest construction engineering firm in Iran, we have designated for being owned or controlled by the IRGC. It is a revenue source for the IRGC. It is not coming off, not at 5 years, 8 years, 15 years under this deal. Any international bank that hosts accounts for it will face cutoff from the U.S. financial system. So those are very tough, aggressive sanctions, and those all remain in place.

Now, there are companies who have done what I would call “arm’s-length transactions” with the IRGC over time that we have designated for conducting business for the IRGC. We have companies like that that are due to receive relief at various phases under the deal, but the business empire, as you described it, remains intact.

Ms. SHERMAN. And if I might add, the IRGC does not support this deal. That should tell you something.

Senator SASSE. Thank you, Mr. Chairman.

Chairman SHELBY. Thank you.

Senator MERKLEY.

Senator MERKLEY. Thank you, Mr. Chairman.

In regard to that, my understanding is the IRGC controls a lot of smuggling and benefits very handsomely, if you will, from the sanctions in that regard, and that that is one of the reasons they are opposed to that. Is that a correct impression?

Mr. SZUBIN. The IRGC is engaged in a lot of nefarious activity within Iran’s economy as well, as you point out, and we have seen allegations, I think credible allegations, that they have engaged in profiteering, black market profiteering, off of sanctioned goods, including, very cynically, off of goods that are going to the health of the Iranian people.

Senator MERKLEY. Ms. Sherman, I want to turn to you. I submitted a series of questions to the Administration, and in response to one of the questions, the Administration has responded, “Iran has committed indefinitely to not engage in specific activities that could contribute to the design and development of a nuclear weapon.”

In this context, does “indefinitely” mean the time period has not been established? Or does it mean “perpetually”?

Ms. SHERMAN. It means that under this agreement and under the Nuclear Nonproliferation Treaty, Iran is prohibited from pursuing a nuclear weapon, obtaining, acquiring, or developing one. Ever. Ever.

Senator MERKLEY. So it really means perpetually.

Ms. SHERMAN. Perpetually, yes.

Senator MERKLEY. So under the NPT, the Additional Protocol and modified Code 3.1, does Iran have the right to enrich up to weapons-grade uranium after the expiration of the Iranian enrichment cap?

Ms. SHERMAN. No, because if they indeed move to enriching to what we would consider weapons-grade, it will raise a red flag to the entire international community, to the IAEA. There are very few circumstances where Iran needs to, for peaceful nuclear purposes, enrich above 5 percent. One could argue for submarine fuel,

perhaps, but indeed, if they went to weapons-grade, it would raise instantaneous red flags, and we would see it as a major noncompliance.

Senator MERKLEY. So enrichment over 5 percent starts to essentially raise this red flag with the exception of submarine fuel? And what percentage—

Ms. SHERMAN. Submarine fuel, and there may be one other or two things. I am not an expert. I could ask my physicist, who is sitting behind me, if there are other instances, but there are very few.

Senator MERKLEY. Well, what enrichment would the submarine fuel be?

Ms. SHERMAN. I think it is 20?

It could be 20, some are higher, Dr. Timby says.

Senator MERKLEY. So that is a big distinction between 5 and 20. But are you basically saying that if the amount of fuel enriched did not specifically meet the quantity profile of the nuclear submarines, that that would be a red flag? So, essentially, for most purposes, it is 5 percent?

Ms. SHERMAN. It is 5 percent or less.

Senator MERKLEY. OK. And in terms of after the—

Ms. SHERMAN. The one other distinction I should make is for the Tehran Research Reactor, which helps to make medical isotopes for cancer research, cancer treatment in Iran—it uses 20 percent. But this agreement says that we will provide fabricated fuel for that Tehran Research Reactor over time, and we have put controls on that so that it cannot be used for other purposes.

Senator MERKLEY. So how much enriched uranium above 5 percent could Iran store without creating a red flag?

Ms. SHERMAN. So two points. Acting Under Secretary helpfully reminds me that for 15 years Iran is not allowed under this agreement to enrich beyond 3.67 percent. So the concern you have raised only begins to raise those red flags after those 15 years. They are allowed for those 15 years to only have a stockpile of 300 kilograms. That 300 kilograms is not enough to provide enough fissile material for a nuclear weapon.

Senator MERKLEY. Right. But after those 15 years, they can have more than the 300 kilograms, so there is no particular limit at that point?

Ms. SHERMAN. There is not a limit, but, of course, again, we would look at an ever increasing stockpile and want to understand the reasons and uses of it. And one of the things that is very clear here, because we have uranium accountancy for 25 years, centrifuge production for 20 years, they have to make a declaration to the IAEA of their Additional Protocol research and development over the long term, that there will be many, many metrics for measuring what they are doing with their program for a very, very long time.

Senator MERKLEY. Because my time is expiring, my last question is: When you look at snapback, that is kind of a sledgehammer approach. Given the scale of violations, is there a scalable response?

Mr. SZUBIN. Yes, Senator. We have reserved the right to snap back “in whole or in part,” and that is a quote from the agreement, and we can do that with our unilateral sanctions or we can do that

with the U.N. sanctions. And the EU has reserved a similar right, whether it is putting back in place on a sector, on a category of transactions, all the way through to full snapback.

Senator MERKLEY. Thank you.

Chairman SHELBY. Senator Cotton.

Senator COTTON. Thank you, Mr. Chairman.

I have to note with some astonishment that there was an 8-minute exchange between Senator Schumer and the witnesses about the meaning of the grandfather clause. I think we got some kind of answer out of it, but I also know that Administration officials have said repeatedly that Iran will exploit every ambiguity in the text of this agreement to that advantage, so I can only imagine what they will say about that clause, should it come to pass.

But moving on, Secretary Sherman, there is a lot of commentary about access—access to Iran's necessary sites, their military sites. It is throughout the JCPOA. Secretary Kerry and Secretary Moniz have frequently talked about "managed access." Can you assure us that this access will actually be physical access, IAEA inspectors will be physically walking into these sites and taking samples or installing equipment?

Ms. SHERMAN. I think that every situation is different, Senator, and that the IAEA has the capability, the expert knowledge to make sure that whatever they do can be technically authenticated. So I cannot go through every hypothetical situation. I know that Director General Amano I am sure will get asked these questions by your colleagues in the Senate Foreign Relations Committee in this informal meeting, so I would rely on his answers more than on my answers. But what I am assured of is that whatever they do in every circumstances where they believe they need to have access, it will be technically authenticated, and it will be meet the standards that they must have and that they require for ensuring verification and monitoring.

Senator COTTON. The answer then, it sounds like, is no, we cannot be assured that IAEA—

Ms. SHERMAN. No.

Senator COTTON.—inspectors will physically and personally be present on every single site.

Ms. SHERMAN. You know, you do not have to be physically present on every site in this technological world to get done what is necessary. Our labs can you walk you through those parameters as well.

Senator COTTON. Who will decide what is and is not a military site?

Ms. SHERMAN. Well, I think the better way to respond to your question is to say if the IAEA believes that it has justification to have access to a site, we have a process to ensure they get that access, whatever that site is, military or nonmilitary.

Senator COTTON. Can Iran deem its research universities to be a military site?

Ms. SHERMAN. As I said, if they have justification to enter any site, regardless of what it is, and the access agreement provides a process to ensure they will get access. The United States of America would not have agreed to an agreement where access was not

assured if the IAEA believed it had to have it. That is what we have in this agreement.

Senator COTTON. Are you aware of any actions that the Government of Iran has taken to sanitize any sensitive or suspected sites since the date of the JCPOA?

Ms. SHERMAN. I am not going to discuss anything that would be considered classified, but there is an all-Senate briefing this afternoon. The National Intelligence Manager will be there, and we will be prepared to answer these questions.

Senator COTTON. Let us move to the side deals between the IAEA and Iran. You acknowledged to Senator Scott that you read the side agreements between the IAEA and Iran. Did anyone else in the U.S. Government read these side agreements?

Ms. SHERMAN. Yes. Some of our experts did as well, as did all of the P5+1.

Senator COTTON. Can you give me an estimate of how many officials read the side agreements?

Ms. SHERMAN. A handful. I would have to stop and think.

Senator COTTON. So you said earlier to Senator Corker that we have to honor the confidentiality of these agreements between the IAEA and Iran, but if you have read them—

Ms. SHERMAN. Well, actually, it is the IAEA and every country with which it does Safeguards—

Senator COTTON. I will come to that—

Ms. SHERMAN.—Confidential Protocols.

Senator COTTON.—in a moment. But the fact that you have read them and other U.S. Government officials have read them, doesn't that undermine the claims of supposed confidentiality in these agreements?

Ms. SHERMAN. Well, we were shown them in a confidential setting, and I will share with the U.S. Senate, as I have done with House leadership, Chairs, and Rankings, my confidential understanding, and we will hopefully keep them in a classified setting.

Senator COTTON. How long are these documents?

Ms. SHERMAN. Very short.

Senator COTTON. Like the road map itself?

Ms. SHERMAN. I would have to stop and think back, but it is very short.

Senator COTTON. Why are these documents classified? This is not a U.S. Government document. It is not a covert action. It is not subject to sensitive collection and methods of our intelligence community. Iran—

Ms. SHERMAN. Because it is—

Senator COTTON. Iran knows what they agreed to. You know what is in it. Why are these classified?

Ms. SHERMAN. So the reason is they are what are called "Safeguards Confidential." Under—

Senator COTTON. Yes—

Ms. SHERMAN.—the Comprehensive Safeguards Agreement (CSA), to which we are also a party, we have confidential Safeguards documents and protocols with the IAEA, between the United States and the IAEA, as do all of the countries that are under the CSA. The IAEA has committed to keeping them

confidential, and so, therefore, they are committed to keeping these protocols under CSA confidential as well.

Senator COTTON. Yes, I am aware that that is the statement you also gave Senator Corker. I assume that you are not implying any kind of moral equivalence between the United States—

Ms. SHERMAN. Absolutely not—

Senator COTTON.—and Iran.

Ms. SHERMAN.—and I indeed said to a Senator—you were not here yet, Senator Cotton, that I understood that this was a very different circumstance in the sense that we were trying to keep Iran from obtaining a nuclear weapon, and that this was an international understanding that had been negotiated among six parties and Iran. So, yes, I understand this is a different circumstance, which is why I believe the IAEA at an expert level shared the protocol arrangements, understanding they would be classified. And I made clear to the IAEA under our system I would be required to share in a classified, confidential setting with members of the U.S. Congress what I had seen, and I will do so this afternoon.

Senator COTTON. Did you make clear to Iran and the other parties that U.S. law, U.S. law that was, in fact, signed in the middle of these negotiations, required Congress to receive the text of all agreements, to include agreements to which the United States was not a party?

Ms. SHERMAN. Indeed, our understanding of the Corker-Cardin legislation that was passed by the House and the Senate is that we must give you every document that we have, and we have given you every document that we have.

Senator COTTON. The legislation says “all agreements.” It does not actually matter whether the U.S. Government has it in its possession or not.

Ms. SHERMAN. Well, it is very difficult—it is very difficult to give you something that we do not have.

Senator COTTON. Did you make that clear to Iran and IAEA at the time, however?

Ms. SHERMAN. Iran and the IAEA are quite well aware of our legislation. I can assure you they follow what you do every single day.

Senator COTTON. And one final question. A fascinating new interview today from Secretary Kerry and Jeffrey Goldberg says that if Congress were to vote no on this, it would be screwing the Ayatollah. And then Secretary Kerry says that if Congress rejects the deal, it would show Iran “America is not going to negotiate in good faith. It did not negotiate in good faith now, and that would be the Ayatollah’s point.”

Surely you made clear to Iran that Congress had to vote on this deal before it could go forward and, therefore, they should not be operating under such a misperception?

Ms. SHERMAN. Of course they knew that Congress was going to vote on this. Everything was very public. Everything that happens here in our country is transparent, democratic, and public, and we are very proud of that fact.

Senator COTTON. Are you concerned about Congress screwing the Ayatollah?

Ms. SHERMAN. I have not seen this interview. I am not going to comment on it, Senator. What I will comment on is that Secretary Kerry, Secretary Moniz, myself, the negotiating team who have been working diligently on this for over 2 years, having briefed the U.S. Senate and the Congress countless times—hundreds of times, quite frankly—did everything they could to ensure the safety and security of the United States. That is our solemn obligation, and that is what we did.

Senator COTTON. Thank you.

Chairman SHELBY. Senator Warner.

Senator WARNER. Thank you, Mr. Chairman.

I am going to start by simply saying, one, I appreciate what you have been doing. I think many of us have concerns about components of the deal. Many of us would like to Monday morning quarterback, but I find it remarkable that some members seem to impugn that you were not there trying to do the best deal possible for the United States of America and for long-term prospects of stability in the region.

I may agree or not agree with what you negotiated, and I have got more due diligence to do. But I would never question the approach you took or the dedication that you have taken in this process.

Mr. Szubin, clearly your actions through both Administrations working on this bring a lot of history and commitment, and I absolutely believe that you want to make sure that we follow up in particular on Iranian actions, destabilizing actions in the region.

I do want to continue, I think, something that Senator Sasse asked about, what would happen if we do not act. There are some who have put forward a theory that have said that if the U.S. Congress turns this agreement down, Iran would still—it would still be in Iran's best interest to go through to Implementation Day so that take down their nuclear stockpiles, disassemble parts of their reactors, so that they could still obtain the \$50-plus billion, in effect isolate America since the rest of the world would be otherwise aligned.

Do you want to comment on that theory? Because it is being speculated on a lot.

Mr. SZUBIN. So, Senator, obviously it is always dangerous to speculate about how scenarios play out, especially highly compromise international scenarios like the one you are describing. But I think the point Ambassador Sherman made earlier is really important in this respect, which is it is not a black or white answer. If the United States were to retain our sanctions because Congress rejects the deal, and certainly for our part we would then implement the sanctions, as it is our obligation to do, we would still see some international enforcement, whether it is on the oil side, whether it is on the reserve side. That enforcement would begin to erode, especially in a scenario that you are describing, where Iran actually goes through with its commitments in order to isolate us and to show they are now the good actor, they are complying with all their commitments, and the United States is the one who walked away.

That is a scenario I very much hope does not occur. It would be terrible for us in terms of our sanctions, in terms of our credibility.

When we exercise these authorities, these extraordinary authorities, we need to be able to do so in a way that is meaningful and where people know we are ready to act.

So I very much hope it does not come to that, but it certainly would be a situation of weakened leverage. It is not going to be zero. It is not going to be 100 percent. But it will be weakened leverage. And the question then is: Could we turn weakened leverage into a much stronger deal? And my assessment is no.

Senator WARNER. Ambassador Sherman, do you have any other comment on that?

Ms. SHERMAN. I could not agree more. My assessment would also be, no, that, in fact, if we walk away, even if we retain some sanctions capability—and we would, of course, enforce our laws—the rest of the world will go in another direction and, more importantly, Iran will go in another direction, and the President of the United States, whether it is President Obama or the next President of the United States, will face a very difficult choice—

Senator WARNER. But there is one—you know, there is a separate premise. Would they walk away immediately or would they actually go through to implementation? We do not know, but it is—

Ms. SHERMAN. I doubt very seriously—if the United States sanctions remain in place, Iran will perceive that we have walked away from the deal and they no longer have to stick with it.

Senator WARNER. Two questions. One, two more questions, and I will try to stay within my time. One is that, you know, one of the concerns we have had is the Administration did say when Congress put tougher sanctions in, moved forward particularly on the SWIFT notions, using the SWIFT system, there was great reluctance from the Administration about us taking that step. I think in retrospect taking that step was important and effective and helped tighten down the sanctions.

I do wonder if we do not move forward, though, you know, will we be prepared to move forward with the severity of those same sanctions, particularly as we look at sanctioning Bank of India, Bank of Korea, Bank of Japan. Comments on that? And I would like to get one last question in, recognizing everybody has gone a little over time.

Mr. SZUBIN. It is a very stark scenario that you are depicting because the institutions you are talking about are some of the most significant and fundamental institutions in the international financial sector, whether it is SWIFT, who is the leading messaging company, secure messaging company for banks worldwide, whether it is the largest commercial banks in Korea, India, the Central Bank of Japan. The prospect of us having to use our sanctions authorities against those entities is frightening.

Senator WARNER. But if we chose to reject this, that would be our policy.

Mr. SZUBIN. It would then be threatening those institutions unless they come along with the U.S. approach on this.

Senator WARNER. Let me just get my last question in. One of the statements you made earlier, as we kind of—and I think further explanation on them, how you got to the 24 days, I was surprised at first about that time. I still have some concerns, but at least I have a little more clarification now. You know, one of the things

that you have said—and I think it is an artful process you created with, in effect, not allowing other members of the Permanent Council of the U.N. to have a veto, that we, in effect, have a default veto. But what kind of assurance can we really have that our current EU partners and friends in the U.K., for example, if they have—and in Germany, if they have engaged in a major way with Iran on a business basis going forward, that they will stick with us? How do we get more comfort around that?

Thank you, Mr. Chairman, for giving me the extra minute.

Ms. SHERMAN. I think the best comfort is the one that Acting Under Secretary Szubin gave, which is, in 2012, we were in the same circumstance where, in fact, Europe had lot of business with Iran. They had a lot of businesses in Iran, and they were very concerned about Iran having a nuclear weapon and moving down that pathway. And so they joined us in enforcement of not only our unilateral sanctions, but put on their own sanctions and multilateral sanctions, and, in fact, enforced them, and companies like Total and Siemens, Peugeot and Renault all had to leave.

Senator WARNER. I would like to hear more particularly from our European allies on that matter.

Ms. SHERMAN. I would urge you to speak with them directly. I think you will get the right answer you are looking for.

Chairman SHELBY. Senator Warren.

Senator WARREN. Mr. Chairman, if I could, I would like to yield to Senator Donnelly and then come back when it is my turn.

Chairman SHELBY. Senator Donnelly is recognized.

Senator DONNELLY. Thank you. I want to thank Senator Warren for her kindness on that, and thank you both for your hard work.

In regards to Parchin and the IAEA agreement and moving forward—and this has been asked by others, but I want to try to clarify. Moving ahead in Parchin and every other facility, is it your understanding that the IAEA can get into every facility that, if they choose to, they can go in there physically themselves as opposed to having Iran turn over materials, that they have physical access?

Ms. SHERMAN. I would be happy to get into this in greater detail in a classified session, Senator. What I can tell you is that whatever the IAEA believes that it needs to do to have a technical authenticated result for whatever access they believe they need to have, they will get it.

Senator DONNELLY. So if they believe they need to have physical access to a place, that will not be denied?

Ms. SHERMAN. As I said, whatever they believe they need for a technically authenticated process, they will get under the agreements that we have negotiated here, and I will be glad to discuss this in greater and more explicit detail in a classified setting.

Senator DONNELLY. That would be fine. We can talk this afternoon, but that sounds like a yes to me.

Is there reason to believe there are any other documents out there?

Ms. SHERMAN. No. If there are, I do not know about them.

Senator DONNELLY. OK. Have you asked the IAEA if there are any other documents out there?

Ms. SHERMAN. I have not asked them explicitly, but I did see the Director General when he arrived here yesterday. We talked. I

asked him questions about where we were with various things, and I have no reason to believe there is any other document.

Senator DONNELLY. Have you asked the Iranians whom you have had these discussions with, "Do you have any other agreements with anybody else at this time that we do not know about?"

Ms. SHERMAN. I have not asked that question explicitly, but given the hours and hours we have spent together, I do not believe there are any other documents.

Senator DONNELLY. I think that is a question well worth asking as we move forward.

Mr. Szubin, the alternative theory that has been put out there or one of the alternative scenarios is that the United States walks away and then we, in effect, go country by country saying, "Make a choice economically. Do not deal with Iran or else we will sanction you"—in effect, "We will not deal with your economy." What is the likelihood of that kind of scenario having success?

Mr. SZUBIN. In the event of us walking away from this deal, I think we would be very much swimming against the tide, because the cooperation we have obtained to date in going around the world, just as you describe, and saying, "We need to pressure Iran," was predicated on a diplomatic path. And so China, India, South Korea could see here is a roadway to test Iran to see if they are ready to make a deal. In this context, we would be walking away from that.

Senator DONNELLY. And I apologize because time is limited, but if we walk away, what is left in terms of strength of sanctions? Because some folks have said we still have significant impact on Iran at that time. What is left as—we obviously know we will still have sanctions in place. So what other global effects will take place?

Mr. SZUBIN. The United States, as you note, Senator, would retain our unilateral sanctions.

Senator DONNELLY. Right.

Mr. SZUBIN. Basically our primary embargo on Iran remains in place, and that is, frankly, true, notwithstanding the deal either way. Our embargo is going to remain in place.

The EU has sanctions with respect to Iran's bad activity outside the nuclear file. Terrorism, human rights, those sanctions would remain in place. But the most severe economic sanctions that we have spent time talking about today and that Congress helped to put in place affect things like Iran's sales of crude oil, petrochemicals, and the assets of the Central Bank of Iran, the access to the banking system internationally. Those are all built on the threat of U.S. sanction with international acquiescence. And it is that acquiescence that I fear we would be risking.

Senator DONNELLY. And the alternative suggestion is that for countries who are not willing to also continue their sanctions if we walk away, that we go to them and say, "Make a choice." How realistic is that?

Mr. SZUBIN. I think it would be a very tough conversation, and I think when you are going to a country like China or India and telling them, "We are going to dictate where you buy your oil from," which is what, frankly, we have been doing for the last few years, they are going to say, "With an eye on what?" What is your prospect for getting a nuclear deal so that we can lift these

sanctions? And if they think that our bar, having moved the goalposts—sorry to mix sports metaphors, but that our bar is unrealistically high, then I think we will have a very hard time securing that cooperation, and that means our sanctions leverage will erode considerably.

Senator DONNELLY. Thank you, Mr. Chairman.

Chairman SHELBY. Senator Warren.

Senator WARREN. Thank you, Mr. Chairman, and thank you, Ambassador Sherman and Under Secretary Szubin, for your work. And I think everyone here understands that a nuclear-armed Iran threatens the United States, threatens Israel, threatens the entire world.

The question now before Congress and the only question before Congress is whether the nuclear agreement negotiated alongside other countries represents our best available option for preventing Iran from acquiring a nuclear weapon. So I want to see if we can just pull some of these pieces together and evaluate the options. What happens if we go forward with this deal versus what happens if we back out?

Let us start with the tough sanctions imposed by the United States with the cooperation of other countries around the world, such as the U.K., France, China, Russia, Germany, the EU. If we reject this deal, we need our international partners to continue the tough sanctions, refuse to trade with Iran, block Iran's access to the frozen assets in order to be effective.

So, Ambassador Sherman, if we walk away, do you believe that all the other nations that have endorsed this deal are likely to continue working with us to impose strong sanctions against Iran?

Ms. SHERMAN. No, because as Acting Under Secretary Szubin said, the reason they cooperated was because we were pursuing a diplomatic solution and they thought that was worth trying to accomplish. That has now been accomplished, so they believe it was worth taking the economic hits they all did to do that. But if we walk away from what they consider to be a good deal—90 countries have spoken out in support of that deal—they will believe that we have changed the equation, we have not operated in good faith, and we are on our own.

Senator WARREN. All right. So let us look at what happens if we are on our own. If the United States attempts to continue sanctions on our own while other nations resume trade with Iran, how effective will our sanctions likely be?

Mr. SZUBIN. They will be less effective than they are today and than they were when we negotiated this agreement.

Senator WARREN. All right. Thank you.

Let us now consider the roughly \$50 billion of Iran's money that is frozen and could be granted to Iran as part of sanctions relief if Iran complies with the deal.

Under Secretary Szubin, let me ask, is most or even a very significant part of this \$50 billion held in the United States?

Mr. SZUBIN. No.

Senator WARREN. So if we walk away, do you believe that the other countries that hold this money will continue to keep it out of Iran's hands?

Mr. SZUBIN. I think we will begin to see those funds be released if Iran starts meeting its commitments under the deal.

Senator WARREN. All right. But the question I ask is: If we walk away from the deal, are you convinced that other countries that hold these funds are going to continue to withhold those funds from Iran?

Mr. SZUBIN. I cannot guarantee you that they will.

Senator WARREN. All right. So let us talk next about Iran's nuclear weapons ambitions. Ambassador Sherman, if we reject this deal and Iran decides to build nuclear weapons, what would be Iran's breakout time—that is, how long do you estimate it would take Iran to produce enough material for a nuclear weapon?

Ms. SHERMAN. The assessment today is 2 to 3 months.

Senator WARREN. OK, 2 to 3 months. And if we accept this deal and if Iran complies with it, what would be Iran's breakout time?

Ms. SHERMAN. At least for 10 years, 1 year.

Senator WARREN. OK. Now, let us next think about cheating. Iran may sign the deal and then try to develop a nuclear bomb anyway. So, Ambassador Sherman, will it be easier for us or harder for us to detect a secret Iranian nuclear weapons program if we accept the deal or if we reject the deal?

Ms. SHERMAN. Clearly, if we accept the deal, we will have many more eyes on; the IAEA not only will have access to the declared sites—Natanz, Fordow, Arak—but they will also have surveillance over uranium, the entire supply chain through the procurement channel. They will have eyes on centrifuge production. They will have access to undeclared sites, that is, suspicious sites; if they believe there is a justification, get in. Much of that, most of that, nearly all of that will disappear if there is no deal.

Senator WARREN. All right. And then I just have one more question on this. Let us talk about war. I do not think Americans want to be dragged into another war in the Middle East, but let us face hard facts. If we reject this deal, Iran's breakout time will go down, and that will increase the pressure to take military action very soon. So what I want to compare here is the effectiveness of these two options, a negotiated option versus a military option.

In the long term, which action is likely to be more effective at preventing Iran from developing a nuclear bomb: accept the agreement and closely monitor Iran's nuclear program, or reject the agreement and, if there is escalation, bomb Iran? Which one is more likely to be effective?

Ms. SHERMAN. Clearly, a long-term negotiated solution, which is what we have in the Joint Comprehensive Plan of Action, is more effective because if we take military action, which the President of the United States will do if he has absolutely no choice, indeed we will only set back their program, it is estimated by the intelligence community, 2 to 3 years because Iran has the know-how. They have mastered the entire fuel cycle to create fissile material for a nuclear weapon, and so, therefore, although we could bomb away their facilities, they could reconstruct them. You cannot bomb away knowledge, you cannot sanction away knowledge. The only way to control it is a negotiated solution that is intrusively and highly monitored and verified. That is what we have negotiated.

Senator WARREN. Thank you. You know, some have said that they want a better deal, but that is not the choice that Congress faces. The deal is the deal, and Congress has two choices: accept it or reject it.

No one can say for certain that this deal will prevent a nuclear-armed Iran, and I will not say it. But no one has put a better, more realistic alternative on the table, and until I hear a better option, I intend to support this deal. Thank you.

Thank you, Mr. Chairman.

Chairman SHELBY. Senator Heitkamp.

Senator HEITKAMP. Thank you, Mr. Chairman, and thank you, Mr. Chairman, for your patience today. I think this is such an important issue and this Committee has unique jurisdiction, and I have watched as you have let Members really get to the heart of what they need to examine, and I want to personally thank you for that.

There is a lot of attempt here to unbake the cake. Right? And I think I have been product and I have been somebody who has been engaged in multi-party negotiations, including some of the large civil settlements that this country has seen, and I know how difficult it is to unbake a cake and to start saying, well, this could be better or that could be better. And I think Elizabeth—Senator Warren—just took us through the paces in terms of what the real options are.

But I will tell you that one thing that I do not believe has been talked a lot about is that the fact of lifting the sanctions regime will, in fact, build a bigger, better, more economically stable Iran into the future. And as long as Iran is on the terrorism list, that creates incredible opportunity, as I think, Mr. Secretary, you have so appropriately talked about the challenges that they have economically today. If, in fact, the sanctions regime is lifted and we look 10 years into the future, Iran is going to be a much more stable economic power. I do not think there is any doubt about it.

And so this might seem off topic for some people, but it is certainly on topic for me, which is the one thing that we could do that would provide competition against an Iran that has the ability to market their oil into the market and have the resulting economic growth as a result of marketing that oil is actually exporting American oil to compete with that Iranian oil. And it is very difficult in my State to explain why we should lift sanctions on Iran when we are sanctioned in the United States of America in terms of our oil exports.

And so I would like to hear from both the State Department and Department of Treasury your response to that statement, especially looking into the future in 10 years when we know that that competition could, in fact, curtail that economic might of an enemy that is pretty powerful.

Mr. SZUBIN. Senator, thank you for the question. Unfortunately, I am not the right Treasury official to speak to the restrictions on sales of American oil overseas.

Senator HEITKAMP. But you do manage the sanctions.

Mr. SZUBIN. Yes.

Senator HEITKAMP. And that is a big part of it. And when you look—as part of your job of managing the sanctions, it is to look

at how those sanctions have an impact on the viability economically of Iran. So you kind of are for me the right guy to ask.

Mr. SZUBIN. Well, what I—

Senator HEITKAMP. No dodging.

Mr. SZUBIN. What I can say with respect to the sanctions is you are right, what is envisioned under this deal is to relieve some of the secondary pressure, not the U.S. sanctions against Iran that are bilateral sanctions, but the secondary pressure internationally on Iran's economy, and if Iran adheres to all of its commitments, Iran can expect some economic recovery. I think it is going to be many, many years in the making before Iran gets back to where it ought to have otherwise been today. But—

Senator HEITKAMP. But you do understand there is a lot of concern about an economically empowered Iran and what that means for stability in the region.

Mr. SZUBIN. I understand it to my very core, and—

Senator HEITKAMP. I do not have a lot of time, and I think the Chairman has been extraordinarily generous with all of us, so I would turn to you, Ambassador Sherman.

Ms. SHERMAN. So, Senator, I think neither Adam nor myself can comment on U.S. domestic policy, though we do well understand how U.S. domestic policy has a profound impact on international relations and international markets. And so I am sure that the particular interests that you have, that we all have, in American economic security and independence when it comes to oil and gas is something that has to be resolved here.

Senator HEITKAMP. But there has been a lot written about the ability to provide some kind of energy security into Europe that could, in fact, be one of those soft power measures, Ambassador.

Ms. SHERMAN. Absolutely.

Senator HEITKAMP. And so I understand that this might be above your pay grade or whatever it is, but I just want to acknowledge that American oil moving into international markets has the effect of curtailing the economic power of Iran, the economic power of Russia, and a whole lot of people that are nation states that really are not friends of this country. And this is an opportunity to give our allies a step forward in the energy security that may, in fact, strengthen the sanctions regime in the event that we ever snap back.

Ms. SHERMAN. I think no one would disagree that energy security for our country, for the world, and, for that matter, dealing with issues of climate and how we manage that will have a profound impact on the development of countries and America's continuing to be the preeminent economy in the world. No question.

Senator HEITKAMP. Thank you, Mr. Chairman.

Chairman SHELBY. Senator Vitter.

Senator VITTER. Thank you, Mr. Chairman. Thanks to both of you for being here and for your service.

Ms. Sherman, I wanted to follow up on a really important issue that I think my colleague Senator Scott got into, and that is, these two significant secret IAEA agreements. They are certainly significant in terms of enforcing this agreement, are they not?

Ms. SHERMAN. I would say they are important arrangements on the modalities that the IAEA will use, but I believe that the public

road map, which you all have access to, lays out what the IAEA is requiring of Iran in broad terms as one of the steps it must take in order to get any sanctions relief along with all the other nuclear steps. And although I agree that possible military dimensions are important—they are—the United States has already made its judgment about it, so we are much more focused on where the program is today and where it is headed in the future, which is what the bulk of the Joint Comprehensive Plan of Action is about.

Senator VITTER. Well, you just said what is available to Members of the Senate and the public is laying things out in broad terms. Aren't the real specifics of verification very significant in judging this agreement? Would you agree with that or not?

Ms. SHERMAN. Of course they are, and that is why, Senator, at the all-Senate briefing this afternoon I will share in a classified session the details that I am aware of the arrangements that have been made under Safeguards Confidential Protocols between Iran and the IAEA.

Senator VITTER. And you have read those two secret agreements?

Ms. SHERMAN. I have read those two Safeguards Confidential arrangements, yes.

Senator VITTER. OK. When do I get to read them?

Ms. SHERMAN. Well, you will not, sir, any more than any other country will get to read the Safeguards Confidential Protocols between the United States and the IAEA.

Senator VITTER. Do you have a vote on this agreement?

Ms. SHERMAN. I do not, obviously.

Senator VITTER. I have a vote on this agreement.

Ms. SHERMAN. Yes, sir.

Senator VITTER. You do not think it is appropriate that I would get to read—you have read these agreements, and I think that is appropriate. I am not arguing with that. I have to vote on this agreement. You do not think it is appropriate that I would get to read it?

Ms. SHERMAN. As I said to the IAEA and to all of my colleagues that I would have to share the arrangements in a classified session with the U.S. Congress—

Senator VITTER. That is not my question.

Ms. SHERMAN.—because of the responsibility in our Constitution—

Senator VITTER. Do you think it is appropriate that I do not get to read it when I have to vote on the matter?

Ms. SHERMAN. Senator, you will have to make your own judgment about it. I do—

Senator VITTER. I am asking your opinion. Do you think that is appropriate?

Ms. SHERMAN. My opinion is that it is in the U.S. national security interest for there to be a Comprehensive Safeguards Protocol and that those protocols remain confidential. That is in our national security interest.

Senator VITTER. Do you think it is appropriate that I, as a sitting U.S. Senator, representing a significant number of Americans, who has to vote on this do not get to read those agreements? I am not talking about putting them on the Internet. I am not talking about handing out copies.

Ms. SHERMAN. I do not have those agreements to give to you, sir. I do not have them in—

Senator VITTER. That was not my question.

Ms. SHERMAN.—my possession.

Senator VITTER. That was not my question. Please answer my question. Do you think it is appropriate that I do not get to read them?

Ms. SHERMAN. I think that the system that has been put in place that maintains these as confidential documents between the IAEA and the countries with which it operates under the Comprehensive Safeguards Agreement is appropriate.

Senator VITTER. And under that appropriate system, you get to read it, although you do not have a vote. I do not get to read it, although I do have to vote. OK. Let me move on.

President Obama earlier said that, “In year 13, 14, and 15, they”—meaning Iran—“have advanced centrifuges that enrich uranium fairly rapidly, and at that point the breakout times would have shrunk almost down to zero.” Is that accurate?

Ms. SHERMAN. Indeed, what is accurate is that—

Senator VITTER. Is that quote accurate?

Ms. SHERMAN. In those years it will not come down to zero, no.

Senator VITTER. OK. What will it come down to?

Ms. SHERMAN. We can discuss that in a classified session.

Senator VITTER. Well, his quote was “almost down to zero.”

Ms. SHERMAN. I know. It is not almost down to zero.

Senator VITTER. OK. So he was wrong.

Ms. SHERMAN. For those years, it is not almost down to zero. It is literally technically impossible for enrichment to go down to literally zero. It is just not possible. That is why even today it is 2 to 3 months.

Senator VITTER. 2 to 3 months, OK. So maybe it is something comparable to that. In that context, do you think that other Middle Eastern countries will strongly consider developing nuclear weapons?

Ms. SHERMAN. I do not, and it is the intelligence community’s assessment that they will not.

Senator VITTER. And to a lay person, that makes no sense. To a lay person, when you have a radical, dangerous regime which has the capability within months of having nuclear weapons, it is not credible that everybody is just going to sit on their hands. So explain to me—

Ms. SHERMAN. Sure.

Senator VITTER.—why that judgment would be credible.

Ms. SHERMAN. So, first of all, to build a nuclear weapon, you not only need fissile material—which today the breakout time is 2 to 3 months; under this agreement it will be a year for at least 10 years, which gives us plenty of time to understand what is going on and to act if we need to take action—but you also have to weaponize that material, and then you have to have a delivery system. And it is the assessment of our community that even if Iran were able to enrich to highly enriched uranium to have fissile material for a bomb, which it does not have today and would take some time for them to get, that they would indeed still be some—maybe as much as a year or two away from getting a nuclear

weapon, if, in fact, they had a program to weaponize and the delivery system to carry it.

Senator VITTER. Well, again, as I tried to lay out my question, I am not talking about today. I am talking about assuming they live under the agreement——

Ms. SHERMAN. So why——

Senator VITTER.——in the later years, those timeframes considerably shorten.

Ms. SHERMAN. Well, the fissile material timeframes shorten. We would have to ask the intelligence community. I am not aware of a current weaponization program. I am not aware of a current program that marries a bomb with a delivery system in Iran. I expect that, in fact, they could do that should they make the decision to do that.

But your question was about other countries, and I did not get to that, and I apologize. I believe other countries will not go there because it is expensive, very expensive. Second, we would know about it. They would find themselves under the intense sanctions that Iran has been under because some of the countries that you are talking about are partners or allies of ours and are trying to deal with aspects of state sponsorship of terrorism of Iran, and they want to work with us to do that, and we are working with them to do that.

So I believe there are any number of both incentives and disincentives for those countries to choose not to move in the direction that Iran has moved in.

Senator VITTER. OK. Thank you, Mr. Chairman.

Chairman SHELBY. This has been a long hearing, an interesting hearing. I just have a few short observations. I will forgo the question.

It has been brought up here. What is and what is not in an agreement is very important, is it not, Mr. Szubin? But if you do not have all of the information, it is hard to discern what is in an agreement.

My question to both of you, we know the history of Iran. We know what is at stake here. Ambassador Sherman, do you trust Iran?

Ms. SHERMAN. Of course not.

Chairman SHELBY. OK. Mr. Szubin?

Mr. SZUBIN. No, Senator.

Chairman SHELBY. So we are entering into an agreement here of great importance with a country that we do not trust, that we have reason to believe is going to cheat or do whatever they have to because they are determined—they are in pursuit of nuclear weapons, and as you have said, they are close to it right now. Is that correct?

Ms. SHERMAN. Well, actually, they are not close to it right now. They are at least a year or 2 years away from a nuclear weapon, should they decide to pursue one, and it is not apparent that the Supreme Leader has made a decision to actually pursue a nuclear weapon. It is 2 to 3 months right now breakout for fissile material.

Chairman SHELBY. Fissile material.

Ms. SHERMAN. Yes, and under this agreement that would change to a year.

Chairman SHELBY. Which is a big step in——

Ms. SHERMAN. Huge step.

Chairman SHELBY. Big step.

Ms. SHERMAN. Huge step.

Chairman SHELBY. Mr. Szubin, do you trust Iran to forgo their terrorist activity and not spend any of this money that they would get, if we say \$50 billion, on promoting terrorism and unrest all over the world?

Mr. SZUBIN. Mr. Chairman, I do not trust Iran, and I think we can be nearly certain that Iran is going to continue to sponsor terrorism and groups like the Quds Force. And that is why it is incumbent on us to intensify our campaign against that.

Chairman SHELBY. Strange agreement. Thank you both for your patience and for your appearance before the Committee.

We have another panel. I know it is a long day. Very important issues. I will call them up.

Our witnesses for the second panel today include: The Honorable Juan Zarate, Senior Adviser for the Transnational Threats Project at the Center for Strategic and International Studies.

Mr. Mark Dubowitz, Executive Director of the Foundation for Defense of Democracies.

Dr. Matthew Levitt, Director of the Stein Program on Counterterrorism and Intelligence at the Washington Institute for Near East Policy.

And Ambassador Nicholas Burns, the Roy and Barbara Goodman Family Professor of Diplomacy and International Relations at Harvard University's John F. Kennedy School of Government.

We welcome all of you here to the Banking Committee, and all of your written testimony will be made part of the hearing record in its entirety. And when we get seated, we will proceed.

Mr. Zarate—is that it?

Mr. ZARATE. Zarate, Mr. Chairman. Like “karate,” but with a “Z.”

Chairman SHELBY. Yes, sir. I will not forget that. We will start with you, sir, when you are ready.

STATEMENT OF JUAN C. ZARATE, CHAIRMAN & SENIOR COUNSELOR, CENTER ON SANCTIONS AND ILLICIT FINANCE, FOUNDATION FOR DEFENSE OF DEMOCRACIES AND SENIOR ADVISER, TRANSNATIONAL THREATS PROJECT, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES

Mr. ZARATE. Thank you, Mr. Chairman, Ranking Member Brown, distinguished Members of the Committee. I am honored to testify before you to discuss the sanctions implications of the Iran nuclear agreement. I am privileged to be testifying with my fellow panelists whose work I have admired for years.

I take this responsibility seriously, given the gravity and implications of this agreement. I come to this issue with views born from relevant experience dealing with Iran from the Treasury Department and the National Security Council.

I know that all involved, including my good friend and former colleague, Adam Szubin, who just testified, have been working incredibly hard toward a peaceful solution to the Iranian nuclear problem.

Mr. Chairman, the financial and economic constriction campaign, which you know well and this Committee has been a part of, built methodically over the course of a decade thanks to the innovative work of patriots like Ambassador Burns, helped bring Iran to the table. In the words of President Rouhani, the sanctions threatened to drive Iran back into “the Stone Age.”

These efforts, it is important to remember, have also been designed to constrain and isolate rogue Iranian behavior—it supports terrorism, the Assad regime, proliferation, human rights abuses—as well as to protect the integrity of the U.S. and international financial systems.

Unfortunately, the sanctions relief framework is flawed. The relief is too front-loaded. It does not account for the increased risks stemming from Iranian commercial and financial activity, and it ultimately constrains the U.S. Government’s ability to use effective financial power against Iranian non-nuclear national security risks.

There are structural problems in the agreement. The snapback is a blunt instrument. The Iranians maintain a heckler’s veto on any reimposition of nuclear sanctions. The agreement unwinds sanctions too broadly. It may put the United States in the position of rehabilitating Iran’s economy.

Mr. Chairman, significantly, the agreement creates an international process that now subjects U.S. sanctions to review. Based on the appellate processes, any U.S. sanction or related action to which Iran objects would be subject to review by the other parties, including Iran, China, and Russia.

We have potentially converted the Iranian sanctions program into one in which the target has an immediate right to challenge and an international venue in which to do it. This will be done with the support of parties that do not like or want to see the use of U.S. financial power and influence. It may even drive a wedge between the United States and Europe moving forward. And at a minimum, all this will temper our aggressive use of financial tools against Iran.

Mr. Chairman, the spirit and letter of the agreement may neuter U.S. ability to leverage our financial power in the future. From the start of negotiations, what the Iranians wanted most was the ability to do business again, unfettered and plugged back into the global system. The regime has needed access to banking, shipping, insurance, new technologies, and connectivity to global markets. That is what they lost over the past decade. That appears to be what they have gained and guaranteed in this deal.

The United States will need to amplify its use of financial measures aggressively against key elements of the Iranian economy to deal with increases risks. It is not at all clear that this is well understood by all parties or even part of our strategy. And we have the ability to do so, unilaterally if needed.

The United States has been shaping and leading the efforts to isolate Iran and enforce sanctions since 2005. The sanctions regime has not been faltering. On the contrary, Iran’s isolation by virtue of its own actions and market reaction has increased over time, and there has been increasing risk aversion to doing business with Iran because of the underlying conduct it engages in, as well as the deep

role of the Revolutionary Guard, the mullahs, and the regime in controlling strategic elements of the economy.

The responsible private sector actors will not rush in immediately, waiting to understand how the sanctions will unwind, whether Iran will adhere to the deal, and their own risk. And the risks from Iran are real and will increase, from terrorist financing and proliferation to corruption and illicit financing. These risks will help keep legitimate actors away from the economy for some time. The private sector as well, Mr. Chairman, will be watching and listening to you and to Congress which can affect the global environment and the reach of our financial power in the future.

I think there are three critical principles for Congress to demand related to this deal and to sanctions. Congress should ensure that there is clarity in implementation of the deal and, in particular, the execution of any sanctions unwinding plans. It should ensure the United States maintains as much financial and economic power as possible. Congress should mitigate the risks attendant to an enriched and emboldened regime in Tehran. These principles then could help inform a new strategy to address the dangerous risks stemming from Iran.

The United States could and should adopt an aggressive financial constriction campaign focusing on the Revolutionary Guard and the core elements of the regime that engage in terrorist financing, proliferation, human rights abuses. This could include the use of secondary sanctions. There should be a recommitment to the elements of a nonproliferation regime focused on Iran. We can reinforce our financial measures against Iranian banks, for example, using Section 311 of the PATRIOT Act. The Global Magnitsky Act could be used expansively to target the finances and holdings of the Iranian regime and those involved in gross human rights violations on its behalf.

Mr. Chairman, these are just some of the measures that could be taken to confront the risks from Iran and shape a new sanctions framework.

Mr. Chairman, just very quickly, when President Rouhani came back to the negotiating table, a Western diplomat based in Tehran shared with me that he thought we had won the war, using economic sanctions and financial pressure. But then he asked, "Can you win the peace?" I think and certainly hope we can still win the peace, but it will require using and leveraging the very same powers and authorities that helped bring the regime to the table. We must ensure that this agreement has not inadvertently empowered the regime in Tehran and taken one of America's most potent powers off the table.

Thank you, Mr. Chairman.

Chairman SHELBY. Mr. Dubowitz.

**STATEMENT OF MARK DUBOWITZ, EXECUTIVE DIRECTOR,
CENTER ON SANCTIONS AND ILLICIT FINANCE, FOUNDATION
FOR DEFENSE OF DEMOCRACIES**

Mr. DUBOWITZ. Chairman Shelby, Ranking Member Brown, Members of the Committee, on behalf of the FDD and its Center on Sanctions and Illicit Finance, thank you for inviting me to testify, particularly with these three great experts.

The Iran nuclear deal is deeply flawed. I will address two of its most serious design defects: the Sunset Clause and the nuclear snapback.

The Sunset Clause permits critical nuclear arms and ballistic missile restrictions to disappear over a 5- to 15-year period. Tehran has to simply abide by the agreement to emerge as a threshold nuclear power, with an industrial-size enrichment program, near-zero breakout time, an easier clandestine sneak-out pathway, ICBMs, access to heavy weaponry, and an economy increasingly immunized against future economic pressure. And we learned today it sounds like from Under Secretary Sherman the IAEA weapons inspectors will not get physical access to all military sites.

Now, as Iran grows more powerful, America's ability to use peaceful economic leverage diminishes. This is a result of an additional fatal flaw in the agreement that provides Iran with what I have called a "nuclear snapback." The agreement repeatedly notes that if sanctions are reimposed, in whole or in part, in response to Iranian nuclear noncompliance, Iran will view that as grounds to void the deal. It also contains an explicit requirement for the United States and European Union to do nothing to interfere with the normalization of trade and economic relations with Iran. I call this the "nuclear snapback" because Iran will use these provisions to threaten to walk away from the deal and engage in nuclear escalation.

Iran will likely target the Europeans to intimidate them not to support the reimposition of any sanctions on any grounds or risk provoking nuclear escalation and potentially war. This is likely to provoke disagreements between Washington and its European allies on the credibility of the evidence, the seriousness of infractions, the appropriate level of response, and likely Iranian retaliation.

It will also stymie the dispute resolution process governed by a joint commission in the agreement. The Administration assumes that even if Russia and China were to take Iran's side in a dispute, Washington could always count on the votes of Germany, France, and Britain, as well as the EU representative. This 5-3 vote majority assumes that one European vote will not change in the face of Iranian nuclear intimidation. While the United States can move unilaterally to impose U.N. Security Council sanctions over the objections of China and Russia, Mr. Chairman, would it do so without European support?

Europe will also have a strong economic incentive not to join the United States in snapping back sanctions. As European companies invest billions in the Iranian market, pressure not to reimpose sanctions will grow.

The same dynamics apply to the reimposition of non-nuclear sanctions, including terrorism. On July 20th, Iran released a statement to the U.N. Security Council that it "may reconsider its commitments under the agreement if new sanctions are imposed, irrespective of whether such new sanctions are introduced on nuclear-related or other grounds." Iran may be able to use this nuclear snapback threat to prevent Washington from combating Iran's support for terrorism or human rights abuses.

Now, in the face of Iranian threats, for example, would Europe agree to a U.S. plan to reimpose terrorism sanctions on the Central

Bank of Iran if it was found to be financing terrorism? I am very doubtful given the deterrence power of the Iranian nuclear snap-back. If the United States cannot use economic pressure to stop Iran, military force may become the only option. As a result, I fear that this agreement may make war with Iran more likely, not less likely. And when that war comes, Iran will be stronger, and the consequences will be much more severe.

But there is an alternative, and it is not war, and it is not about killing the deal. It is about a better deal. Congress should require the Administration to amend the agreement's fatal flaws, especially the Sunset Clause. One key amendment. Restrictions on Iran's nuclear program, access to heavy weaponry and ballistic missiles should remain until the U.N. Security Council, where America retains its veto, determines that Iran's nuclear program is not a threat. One key amendment. The United States and Europe should also keep in place some key parts of the economic sanctions architecture so that we do not need to snap back anything. That leverage will still be in place.

Now, there is ample precedent to amend this deal. Congress has rejected or required amendments to about 200 bilateral and multilateral international agreements, including significant cold war arms control agreements with the Soviets at a time when Moscow had thousands of nuclear-tipped missiles aimed at our cities. If Congress rejects this deal, China and Russia might return to some Iranian business, but they are likely to stay at the table to keep Iran from getting nuclear weapons.

Europe, however, is Tehran's big economic prize. The key will be to use diplomatic persuasion and U.S. financial sanctions to keep the Europeans out of Iran. Few European banks are going to risk penalties or their ability to transact in dollars. European energy companies will find their financial pathways into Iran stymied. We will never again have the kind of powerful U.S. secondary sanctions leverage as we do today. We should use it to get key amendments to this deal. Those amendments will lower the risk of a future war against a much more powerful and dangerous Iran.

Thank you, Mr. Chairman.

Chairman SHELBY. Dr. Levitt.

**STATEMENT OF MATTHEW LEVITT, PH.D., FROMER-WEXLER
FELLOW AND DIRECTOR, STEIN PROGRAM ON
COUNTERTERRORISM AND INTELLIGENCE, THE WASH-
INGTON INSTITUTE FOR NEAR EAST POLICY**

Mr. LEVITT. Chairman Shelby, Ranking Member Brown, and Members of the Committee, thank you for this opportunity to appear before you today to discuss the nuclear agreement with Iran and the challenges it poses to the future viability of the U.S. sanctions architecture.

The Administration is telling people privately that it interprets the deal's sanctions provisions in a very aggressive way, but it is not making that clear to the public, to Congress, our allies, the business and finance communities in particular, or Iran.

Unfortunately, if we do not articulate the position that doing business with Iran still comes with real business and reputational

risks, others will not perceive there being much risk at all and will rush head first into the lucrative Iranian market.

U.S. officials say the Administration's interpretation of the deal enables it to do several unilateral things that will hinder Iran's economic development, including denying Iran access to the U.S. financial system and the U.S. dollar, denying Iran access to the U-Turn transaction mechanism, through which Iran dollarized international oil transactions in the past, and aggressively enforcing CISADA's secondary sanctions on foreign entities doing business with entities that remain listed for terrorism or human rights issues.

The problem is that these laudable positions have not been made public in any meaningful way, and they are only effective if they are aggressively publicized and then equally aggressively enforced. The fact is, as U.S. officials will concede in private conversations, that the Administration suffers from a trust deficit. Whether one believes that this is deserved or not, it is there. And the fact is that not only are none of the positions I just listed clear within the deal, the deal could easily be read as prohibiting each and every one of them. Failing to make these positions public not only undermines their utility, it makes people question whether the Administration's intention is to act on these positions moving forward. These are critical issues, which should not be open to interpretation under the Iran deal.

Just a few weeks ago, the Financial Action Task Force issued its latest public statement identifying Iran as a jurisdiction with strategic deficiencies which poses risks to the international financial system. FATF found that Iran presents such ongoing and substantial money-laundering and terrorist financing risks that the international community must apply active, what they call "counter measures" to protect themselves and the larger international financial system from Iran's illicit financial conduct. But now, under the Iran deal, much of the world will be looking to expand business relationships with Iran. A respected European journal already contacted me asking me to write an article on what more Europe can do to proactively reintegrate Iran into the international financial system. And one could forgive the editors for thinking this should be our collective policy, since the JCPOA specifically talks about parties refraining from actions that could undermine normalization of trade and economic relations with Iran.

For years now, U.S. officials have pointed to the conduct-based nature of Iran sanctions. Illicit conduct brought upon Iran sanctions aimed at countering said conduct. Today Iran's illicit conduct continues, and if the conduct-based consequences do not kick in, this could be the death knell of this toolkit. Designating a person here or there or a company here or there is not enough. What worked was making Iran as a jurisdiction an unattractive market due to the massive business and reputational risks inherent to doing business in or with Iran. But at the very time we most need to be able to highlight the fact that Iran is a tremendously risky jurisdiction, where the IRGC controls much of the economy, human rights abuses are on the rise, and support for militancy and terrorism continue unabated, we are denied under the Iran deal the ability to discourage business with Iran.

The best we can do is to delineate Iran's ongoing illicit conduct, remind that there are still some U.S. secondary sanctions, and maybe some reputational risk. The former—secondary sanctions—depends on U.S. follow-through, while the latter—reputational risk—depends on how the rest of the international community perceived risk in the wake of an Iran deal that does not discourage, but actively encourages business with Iran. How effective will it be to highlight the role of the IRGC in Iran's economy once the IRGC has been removed from the EU sanctions list?

Major international banks will be slow to move back into the Iranian markets, but major non-U.S. companies are likely to trip over one another in a rush to re-enter the potential market—which is already being described in Europe as an “El Dorado” and a potential “bonanza.”

Finally, under the Iran deal, we lose the current balance of U.S. unilateral and regional and global multilateral sanctions. Under the deal, U.N. and EU sanctions largely disappear, and what remains are only U.S. sanctions. To be sure, U.S. secondary sanctions on non-WMD proliferation illicit conduct remain in place and would impact the behavior of European and other foreign banks and businesses, but this puts the onus solely on the United States. The deal is not a bilateral U.S.-Iran deal but a multilateral one, in fact, and our partners should be expected to do their part holding Iran accountable for its illicit conduct.

Thank you very much.

Chairman SHELBY. Ambassador Burns.

STATEMENT OF NICHOLAS BURNS, GOODMAN PROFESSOR OF DIPLOMACY AND INTERNATIONAL RELATIONS, HARVARD KENNEDY SCHOOL

Mr. BURNS. Mr. Chairman, thank you, Ranking Member Brown, Senator Kirk, thank you for the opportunity to testify. Mr. Chairman, you have my testimony. I will just make four quick points.

I served in the Bush administration as Under Secretary of State and had the pleasure to appear before your Committee before, had lead responsibility on Iran, and I come to you as a supporter of this agreement. I think it has many benefits for our country, and this is my first point. I will effectively arrest the forward movement in Iran's nuclear program that began with Mahmoud Ahmadinejad's election 10 years ago this summer. And it is good morning make sure that Iran does not have the potential to produce fissile material for their nuclear weapons program for the next 10 to 15 years. It is going to narrow that breakout time, as the last panel discussed, from 2 to 3 months now to about a year. There will be significantly strengthened inspections of Iran's nuclear supply chain for 25 years. And sanctions will not be lifted—and this is important; this could take months—until Iran complies with the letter of the agreement.

The Administration is rightly going to maintain sanctions on Iran for terrorism and human rights violations, and a final advantage—and it has not been discussed this morning—is that we have an opportunity to stop Iran from becoming a nuclear weapons power through diplomacy and negotiation without having to resort to war. I certainly believe any American President should use force

should they get close to a nuclear weapon. That is not the case now. And I think both President Obama and President Bush before him thought that diplomacy should be tried first. I congratulate the Administration on this accomplishment.

Second point: But there are risks here. I have outlined some of the benefits, but there are substantial risks, and I am mindful of them. The most important is that the super structure of Iran's program, both uranium and plutonium, is going to remain in mothballs. It will be intact. It can be rebuilt and revived 10 to 15 years from now when the restrictions begin to lapse. I fully expect the Iranians two decades from now will want to reconstitute a civil nuclear program. The problem for us then will be that they could perhaps build a covert program on that facility or behind that facility, and that is going to be a problem for the United States at that time. We will have to reconstitute a sanctions regime. That will not be impossible, but I do not minimize the difficulty of doing that. I worked with Juan Zarate in trying to establish that regime 10 years ago.

And, finally, I would just like to say that the global embargo is on Iran conventional arms and Iran's ballistic missile programs that will end in 5 and 8 years, respectively. I wish they had not been agreed to, the end of the embargoes. I wish the Administration had held the line. I wish we would not be in a position 5 and 8 years from now of having to reconstitute sanctions programs, and I think that was a compromise that should not have been made.

The third point, Mr. Chairman, if you weigh the benefits and the risks, I think that the benefits outweigh the risks, because we are going to freeze this program for 10 to 15 years. And without the agreement, and if we get into a scenario of no deal, where Congress disapproves and defeats the President, I think three things will happen: The global coalition that we have built for 10 years across two Administrations I think inevitably is going to weaken. The sanctions regime will not end immediately. Certainly, the United States would not end its sanctions. But it is going to atrophy. And, most importantly, the Iranians will not feel constrained to abide by the restrictions that Under Secretary Sherman and Secretary Kerry negotiated. They will be unfettered and unshackled. They will be able to move forward to become a nuclear threshold state again, and I think that would be a weakening of American strategic interest.

I do think that sometimes we are too caught up in the conventional wisdom in this debate, and just two quick examples that I think are relevant, Mr. Chairman. I do not believe the congressional defeat of this nuclear deal will lead inevitably to war. I do not think that is right. I think Iran would be careful perhaps to become a threshold state but not to cross the line. But neither do I believe that implementing the deal leads inevitably to an Iranian nuclear weapon. A lot will depend on what we do—not so much perhaps President Obama, but the next President and the President after that. And I think that is what Congress should be thinking about. How do we strengthen American strategic policy in the Middle East to effectively deter the Iranians as we implement the nuclear deal?

The President is giving a speech at this hour at the American University. I hope what he is saying there is that we are going to close the big gap right now between the United States and Israel and ensure Israel's qualitative military edge. I assume he is saying that, that we should continue with the effort to strengthen the Gulf countries militarily, as Secretary Kerry did, I think successfully, this week. But we should also say, the American President should say that he would use force against Iran should it get close to a nuclear weapon, should it violate this deal. There are things, I think, that both Democrats and Republicans here on Capitol Hill can agree to perhaps in an accompanying statement to the nuclear deal to strength on a bipartisan basis America's policy in the Middle East.

So, Mr. Chairman, I support this agreement. I would hope that Congress would approve this agreement and strengthen the ability of our country to move ahead, both to pursue the nuclear deal but to contain Iranian power in the Middle East in the process.

Thank you.

Chairman SHELBY. Thank you.

I have a few questions of Mr. Zarate. Secondary sanctions or sanctions, as I understand it, place restrictions not directly on Iran but on those who would deal with Iranian entities. I will pose this question to you and to Mr. Dubowitz. Even if the Europeans and others were to completely lift restrictions on dealings with Iran, would U.S. secondary sanctions still keep major global companies from doing business in and with Iran?

Mr. ZARATE. U.S. secondary sanctions, which would apply to third-country nationals and companies, have enormous impact and reach and do affect what countries do and what these companies decide to invest in. So I think the general answer is yes. It depends on the environment. It depends on the nature of the secondary sanctions, whether or not they are deemed to be legitimate, whether or not they are conduct-based, which is how these efforts have really worked and pinched the Iranians. And it would depend on the sense of enforcement of those sanctions. If there is a sense that these are sanctions on the books only and are not going to be expanded, are not going to be enforced, then they will not work.

Part of the effectiveness over the past 10 years has not only been that the sanctions regime has been put in place, but that they have been enforced. And they have been enforced and led by the United States and the United States alone.

Chairman SHELBY. They have to be meaningful, in other words.

Mr. ZARATE. Exactly right.

Chairman SHELBY. Mr. Dubowitz?

Mr. DUBOWITZ. Chairman Shelby, I agree. I think if Congress overwhelmingly approved this deal, I do not think major financial institutions and energy companies are rushing back in, anyway. I think they have deep concerns over counterparty risk, over doing business with the Revolutionary Guards. And, most importantly, they have very deep concerns over political risks with respect to who the next President is, who the next Under Secretary of the Treasury is, and how vigorously will we enforce our—I think if Congress were to disapprove the deal, even more reason why they would not be rushing in. I think that actually would extend the

amount of time it takes for them to actually reenter the Iranian market. So a result of the congressional disapproval I do not believe is going to lead to the collapse of the sanctions regime. If anything, as Mr. Zarate has said, the power of U.S. secondary sanctions, conduct-based sanctions, are going to make major financial institutions and energy companies very reticent about reentering the market, whether you approve or disapprove of this deal.

Chairman SHELBY. Dr. Levitt, risks to the financial system generally. The integrity of the U.S. financial system is a major concern of this Committee. The Financial Action Task Force found Iran to present great risk to the financial system due to its lack of money-laundering safeguards and the involvement of Iranian banks in supporting terrorism. Is there reason to believe that the problems that gave rise to this task force designation will go away anytime soon? And is it safe for non-U.S. persons and entities to do business with Iranian banks? Would you explain?

Mr. LEVITT. Thank you for the question, Chairman. It is a very simple answer to the FATF question. No, those risks are not going away. And let us be clear. FATF is talking specifically about terrorism and money laundering, illicit financial risks. It has nothing to do with proliferation. Take proliferation activities off the table. All of the FATF warnings remain in full force. This was just from the end of June. Their next report will be issued in October. And it is very important, and the Administration claims that it will, and it should be held to, going around explaining to people these risks exist.

The problem is that how the world interprets risk is going to change when it is just the United States. In the first instance, secondary sanctions apply only if you want to have business here. If you are a small company that does not want to, if you combined an Iranian company that is doing this arm's-length business with the IRGC that Adam Szubin talked about, they might be able to do business. But foreigners, especially Europeans and others, when these entities come off the EU list and there now is a fissure, the kind of fissure Iran has been trying to create between the international community for some time now, well, the European Union does not seem to think that these are listable entities anymore. The United States does. There is some risk. It is less risk. How long? Will it be 2 years? Will it be 5 years? Will it be 8 years? The full 20 years? No one can fully answer that question because it is changing the nature of risk. It is no longer a consensus.

Chairman SHELBY. Mr. Dubowitz, pathway to a bomb, that is what we all underline and are thinking here, I believe. In your testimony, you describe how the agreement is fundamentally flawed because even if Iran abides by the deal, which none of us believe it will, it can reopen and expand each pathway to a bomb that the agreement seeks to shut down. Could you describe briefly here today how this would work and what sanction tools a future U.S. President would have to stop Iran from achieving a pathway to a bomb?

Mr. DUBOWITZ. Thank you, Chairman Shelby. So under the agreement, because of the Sunset Clauses, the restrictions on Iran's nuclear program, ballistic missile program, access to heavy weaponry are going to go away. They start going away year 5 and

then 8. At year 8 ½ Iran can start to do advanced centrifuge R&D. At year 10 it can start installing an unlimited number of centrifuges in the Natanz facility. It can shorten the breakout time between 10 and 15 years. By the way, after 15 years, Iran can enrich uranium to 60 percent, we heard from Under Secretary Sherman today. I mean, 60 percent is about as close to weapons grade as you can get. Iran will be able to legally do that under the agreement. They will legally be able to build multiple Natanzes, multiple Fordows, multiple heavy-water reactors. They will be able to accumulate an unlimited amount of enriched uranium all over the country. So what that implies is a patient, multi-pathway to a bomb, both a Natanz pathway, a Fordow pathway, and an Arak pathway.

Now, the second part of your question is: What do you do about that? When Iran has an industrial-size nuclear program with near-zero breakout and an easier clandestine sneak-out and an ICBM program, my concern is in terms of sanctions there is nothing you can do about it. The sanctions tool is gone. And at that point you have to face a binary choice, which is you either accept that you now have a nuclear threshold Iran with unlimited enrichment capacity and multiple heavy-water reactors and an ICBM program and the capability to build a bomb very, very quickly, or you use military force to forestall that kind of breakout or sneak-out. We will not have a peaceful option left, and when that military force is used, Iran will be a much stronger country, much more powerful, and I think the consequences to American security will be much more grave.

Chairman SHELBY. I will pose this question for all of you. As I mentioned in my opening statement, sanctions are a crucial tool of U.S. policy. I am concerned that the U.S. Government is not taking maximum advantage of this tool. Is any part of the U.S. Government tasked with long-range strategic sanctions planning? And is anyone within the U.S. Government tasked with doing contingency planning for sanctions equivalent to what the Pentagon does with operational plans? And what improvements could we make in those kind of matters? We will start with you, Mr. Zarate.

Mr. ZARATE. Mr. Chairman, we established, when I was at the Treasury, the Office of Terrorism and Financial Intelligence, now led by Adam Szubin, and that is putatively the war command for financial power and tools. There is a question, though as to whether or not we are doing enough to think about the preservation of those tools, the use of them aggressively in other contexts, and, frankly, the use of these tools by other nation states like the Chinese and Russians to not only extend their reach but to also exploit our vulnerabilities.

And so I would say that that responsibility lies largely with the Office of Terrorism and Financial Intelligence at the Treasury Department, in concert with the intelligence community, in concert with others, but that perhaps we need to be more aggressive and more forward-leaning in terms of the use of this power.

And one of my concerns with this deal is it is not clear that we have considered fully the long-term implications for the use of our power in this regard.

Chairman SHELBY. Mr. Dubowitz?

Mr. DUBOWITZ. Chairman Shelby, a simple answer. I would ask Under Secretary Szubin, who is an incredibly talented professional, to provide you the 10- to 15-year contingency plan for the use of economic sanctions against Iran when it has near-zero breakout, easier clandestine sneak-out, and unlimited enrichment capacity. That plan should be in place today because that fundamentally is something that I think everybody is concerned about, that because of the sunset provisions we are going to use our economic power over time, and we should have that plan in place today, and that plan should be disclosed to your Committee.

Chairman SHELBY. Dr. Levitt?

Mr. LEVITT. I will just echo what Juan said in particular. I used to be the Deputy Assistant Secretary for Intelligence at Treasury with NTFI. It is the only finance ministry in the world that had its own intelligence component. The ability to interact with the intelligence community is quite vigorous. We were both there when with NTFI we would have these types of strategic planning meetings at the time for the things we were dealing with then, and I believe and certainly hope that they are having these types of meetings now.

What is unclear is just how far over the horizon the strategic conversations are going and whether or not we are taking into consideration the immediate impact of this deal on the long-term efficacy of our U.S. sanctions architecture.

Sanctions are a tool to be used to reach goals. We should not be doing this to say we want to use sanctions forever. But we are always going to have goals that we want to reach for which sanctions could be a useful tool, and, therefore, it is critically important to maintain that tool as viable and effective.

Chairman SHELBY. I will ask all of you this simple question, and I think it goes—Ambassador Burns first, go ahead.

Mr. BURNS. Mr. Chairman, if you would not mind, I just wanted to answer your question if that is OK.

Chairman SHELBY. You go ahead. I should have.

Mr. BURNS. Thank you so much.

I would say that the most important thing for us, the United States, is to have effective Treasury, State, and White House cooperation on what we are trying to do with sanctions and to persist over the long term, first.

Second, we have got to marry what we do with our allies around the world, and I think that is the problem if Congress disapproves the deal and we walk away. We lose that potency of the sanctions.

And, third, I say objectively—I cannot speak objectively about the Bush administration because I was part of it. But I think that both President Bush and President Obama have effectively pursued a sanctions regime against the Iranians, which is one of the reasons why we are here today. They, you know, submitted to negotiations, and the deal has been made.

Thank you.

Chairman SHELBY. I will ask that question to you. I asked it earlier to each one of you. Do you believe that any agreement with Iran—can you trust Iran? Do you trust Iran not to cheat if they get a chance?

Mr. ZARATE. Mr. Chairman, I served in the White House as the Deputy National Security Adviser for Combating Terrorism, so I got to watch Iranian nefarious activity, lethal activity against our own troops and against civilians around the world. So do I trust Iran? Absolutely not. And this is precisely why any deal of any sort, whether it is this JCPOA or any other, has to have effective monitoring, effective enforcement, and we have to have tools that deal with all of the other risks, which will go up because of an enriched regime in Tehran.

And so I do not think we have done that. I do not think the deal has that in mind, and certainly, I have not heard from the Administration a plan to deal with those increased risks, and that is a real challenge with the regime in Tehran.

Chairman SHELBY. Mr. Dubowitz?

Mr. DUBOWITZ. Mr. Chairman, I do not trust Iran, and I was struck today—my jaw dropped—when Under Secretary Sherman effectively admitted that we will not have physical access to all military sites, because this deal is a bet on the IAEA. This deal is a bet on verification and inspection. This deal is a fundamental, existential bet that we will be able to go anywhere anytime into military sites. The Iranians have been saying for years now, “We will not allow the United States or the IAEA into our military sites.” And if we cannot get physical access, boots-on-the-ground access into all military sites, then I am deeply concerned about the efficacy of the verification and inspection regime. And, therefore, we all agree we do not trust Iran, but if we do not trust our own verification and inspection regime, I think we have a serious problem.

Chairman SHELBY. Dr. Levitt?

Mr. LEVITT. We can all trust Iran to engage in even more nefarious activity tomorrow than it did today. Beyond that, we cannot trust Iran for those of us who have worked on the issue in and out of Government. The verification regime, therefore, is critically important, and as Mark laid out, there are some holes big enough to drive a truck through.

The question is not even so much is it fair that the people who have a vote do not get to read these IAEA agreements and others did. The question is: Why was that agreed to? It is absolutely true that we in the United States want those provisions to be kept a secret so that our information is not made public either. But why was that agreed to in the deal? That is what I do not understand. And the question is how strong these verification tools are going to be, not the 24/7 verifications of declared sites but the ones where the real work is happening.

Chairman SHELBY. Ambassador Burns?

Mr. BURNS. Mr. Chairman, you will remember President Reagan said of the Soviets, “Trust, but verify.” I think we have to say of the Iranians, “Do not trust, and we must verify.” And I think everyone agrees on that.

But I would say on military sites, if this agreement is implemented, and if, you know, 2 or 3 years down the road we suspect there are covert facilities, and if the Iranians deny—ultimately after this managed inspection process deny access, they will be in violation of the deal. And so in that eventuality—it may not be

what Mr. Dubowitz was talking about directly—we will have a way forward to press the Iranians.

Chairman SHELBY. Thank you.

Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

Especially to Mr. Zarate and to Ambassador Burns, thank you for the work you did. I think that neither you two nor Secretary Clinton nor Secretary Kerry nor President Obama nor President Bush get the credit for weaving together these six countries, the P5+1, against all odds and holding them together in these sanctions, and I think the historical context and the very difficult diplomatic maneuvers and accomplishments that you made we should all thank you for, and that should be the historical context of all of that, so thank you.

Ambassador Burns, you said a number of things that were interesting. You said you do not see a more effective, credible, or realistic alternative that would give the United States a greater probability at this point of preventing an Iranian nuclear weapon. You then said that if Congress rejects this agreement, you mentioned the global coalition would weaken, sanctions would atrophy, and shackles on Iran—I cannot remember if you said “undone” or “loosen.”

Talk to us, if you would, what would happen if we reject this, and especially in light of what our P5+1 allies would do, what their reaction would be; and what about other countries in Europe and Asia, notably Japan and India and Italy, what their reactions might be.

Mr. BURNS. Thank you, Senator. I do think that the framework for members—I mean, one of the questions that members have to ask, and we all do, too, is: Is there a credible alternative? I wish there were because I do think this is a combination of benefit and risk. It is not a perfect deal. But I do not see one right now, because if you work through the logic train, if Congress defeats the President, if the United States cannot implement the deal, if we cannot remove the sanctions and get the benefit of Iran complying, then I think a couple things happen.

Number one, part of the value of the sanctions regime has been the countries that you mentioned, not just the EU but India finally, after a lot of work, complying; and Japan and South Korea and the other major trading partners. Some of the banks, obviously, are not going to go back and do business, but some of the corporations in those countries will. And so I think we will begin—the regime will begin to believe that political unity we have had—and it is very powerful when you have well over 170 countries sanctioning Iran politically. So that is the first thing that will go.

Second, I think the Europeans will be in an extraordinarily difficult place. You know, all their prime ministers and parliaments support this deal. They all support the deal, the governments do. And so they will not want to hurt the United States if we cannot implement the deal, if we ask them not to move forward. But I think there will not be unity in the European Union.

For instance, the European Union will have to reauthorize EU sanctions at some point. I can think of three or four European Union members who might not want to reauthorize—the weaker

countries, the ones that are closer to Russia, for instance, and the Russians would love to embarrass the United States. So I think that is a problem.

The biggest problem that I see in Congress defeating the President is that ultimately then this deal will not go into effect. Iran will be unfettered and unshackled. It will not have the restrictions that the deal promises the next 10 or 15 years. It will not be a frozen country in terms of its nuclear capacity. It will be a nuclear threshold state again. So if I weigh the—it is hard to say exactly what would happen because we are talking about hypotheticals. I do not want to be too doctrinaire. I think this would be a messy situation. But I think ultimately two things would happen: the Iranians would be strengthened and we would be weakened in the long-range struggle that we are in with them. We are competing for power in the Middle East. We need to win over the next 20 to 25 years. And despite my misgivings about part of the deal—and I enumerated them—I think what we get is we stop them for the next 10 or 15 years, and for me that means a lot, and that is why I support the deal.

Senator BROWN. Thank you. I think people supporting this agreement and people on the other side and people that are undecided, like a number of us on this Committee, all believe that the President—that the military option should be available. You mentioned that in your testimony. When you said that we should provide a more concrete assurance that the United States would take military action, what did you mean by that? Should the President say that again? Should the Presidential candidates, people who want to be the next President, make that clear? Is it something we do now? Is it something we reiterate in the next 18 months? What do you mean by that?

Mr. BURNS. What I mean, Senator, is that the United States needs to have strategic intimidation of Iran, and it needs to be credible. It cannot be credible if they do not think we mean what we say. And this is going to have to be, I think, for President Obama and his successor and the successor's successor over the next 25 years.

So I would hope that every Presidential candidate of both parties, but also most pertinently President Obama, would say unequivocally, unambiguously, if Iran bolts from the agreement, violates it in a fundamental way, and if we see Iran racing toward a nuclear weapon—we would have a little bit of time to react—that the United States President would use force to prevent that from happening. It would not resolve the entire problem. It would knock them back for a couple of years if we bombed Natanz, Fordow, and the Arak heavy-water reactor. But that would be substantial. It would mean that at some point we would probably have to have another negotiation down the line. But I cannot see the United States succeeding in containing Iran if we are not willing to use force and be credible about it. And I say this with the greatest respect, because I respect President Obama, of course—I think he needs to say that in the middle of this debate to reassure the Congress and reassure the American people and reassure people like me that that is a credible threat of force. And I have not seen the speech that he just gave, and perhaps he said it in that speech.

Senator BROWN. OK. Thank you.

One last question, Mr. Chairman, for Mr. Levitt. You describe in your testimony that major secondary bank sanctions will be retained under the agreement. You note that is a good thing. If Congress does not reject the deal, are there ways that Treasury should be using these bank sanctions in a more robust way to mitigate the problems you have identified with the deal?

Mr. LEVITT. Thank you for the question. The secondary sanctions, as we have all said, are very, very powerful. The secondary sanctions would remain on the non-WMD proliferation activities. The kicker then is that they are not there for everything, and it has never been the case that a particular bank was only involved in proliferation or terrorism.

So it is going to be difficult to get the intelligence sometimes to be able to show that an entity is engaged in activities relating just to terrorism, and then it is going to be a question of political will. As Mark said, if you have something like the Central bank of Iran, will there be the will to put forth sanctions on those types of major entities, or even smaller ones if we think that that might annoy the Iranians?

It will deter the major financial institutions and some major corporations from doing business in Iran, at least for a period of time, the banks probably for a long period of time. That is for sure. But by virtue of it being limited to certain types of illicit activity, we are no longer talking about Iran as a risky jurisdiction when it is becoming an even more risky jurisdiction. And that toolkit, which was in some ways the most effective—not the formal sanctions of any kind, but the informal sanctions that brought to bear the reputational and business risks, those are going to begin to fade very, very quickly.

Senator BROWN. Thank you.

Thank you, Mr. Chairman.

Chairman SHELBY. Senator Kirk.

Senator KIRK. Thank you, Mr. Chairman.

Mr. Dubowitz, let me show you a list that I got, 290 American citizens who we think have been killed through Iranian terror. This list covers 40 States, including 24 people from New York, 22 people from Florida, 14 people from Ohio, and 13 from my home State of Illinois. If we deliver over \$100 billion to Iran, what do you suspect will happen with regard to this death toll of Americans against Iranian terror?

Senator BROWN. Mr. Chairman, if I could interrupt, we have a habit in this Committee of doing this. Could you give us the source of this list?

Senator KIRK. This is mainly the U.S. Marines that were killed in 1983.

Senator BROWN. U.S. Marines who were killed in 1983.

Senator KIRK. This is the 241 Marines that were killed there.

Senator BROWN. At the Lebanese——

Senator KIRK. This was in Lebanon.

Senator BROWN. OK. Thank you.

Mr. DUBOWITZ. So, Senator Kirk, I mean, it is well known who the victims of Iranian terrorism are. There have been multiple lawsuits. There is over \$20 billion in outstanding judgments.

I would note, by the way, that a group representing U.S. victims of terrorism just filed an injunction in a U.S. court to block the Administration from giving \$100 billion back to Iran. And so I think that the purpose of that injunction, Senator Kirk, is to actually prevent future victims of Iranian terrorism. I actually find it quite surprising that we have not required the Iranians to satisfy the judgments for past victims of Iranian terrorism, and yet we are willing to give them billions of dollars to fund what everybody agrees would be future acts of terrorism against Americans and others.

Senator KIRK. Thank you.

Mr. DUBOWITZ. I would also note one of thing, Senator, Kirk. I did some research into this, because we talk a lot about where this money is going to be spent in terms of Syria and Hezbollah and Hamas, and people have said that it is not a lot of money, it is low-cost and low-tech. But I looked into actually the Iranian budget for 2015. The IRGC and the Quds Force are going to get \$6.4 billion in that budget. President Rouhani is anticipating the sanctions relief in his 2015 budget. That represents 65 percent of the total defense budget of Iran. It represents actually almost 10 percent of the total public budget. So the Iranians will spend almost 10 percent of their total public budget supporting the Revolutionary Guards and the Quds Force, who are the entities primarily responsible for acts of terrorism. It gives you a sense of where the Iranian regime is actually highlighting its own priorities.

Senator KIRK. If I could follow up, I have got a second——

Chairman SHELBY. Senator Kirk, he wants to answer.

Senator KIRK. OK.

Mr. ZARATE. Senator, I just wanted to add to that, if I could for just a moment. It does strike me as odd that we have assumed as a country that the cost of the deal is simply that the money will flow back to Iran in an unfettered, uncontrolled way, and that we are doing nothing, at least in the immediate term, to deal with the very real risk that terrorist financing will flow in the international system through the Revolutionary Guard Corps, the MOIS, or the Quds Force. So it just strikes me as odd that we have accepted almost as a principle of shrugging our shoulders that this is a cost of the deal when I do not think it should be. And I also think it is remarkable that the Administration has described the walk-away plan here as if we will be the isolated party internationally, when, in fact, the Iranians continue to engage in a whole range of illicit conduct.

When we entered into the negotiations with Iran completely isolated, with the onus on Iran to prove its bona fides, to prove the peaceful nature of its regime, and suddenly we are being told at the moment of fruition that if we do not accept a deal, we are going to be the isolated party internationally, that is a remarkable turn of the tables. And I just do not think the cost of the deal as described is acceptable, and we should be mitigating against that. And there are ways of doing that, and I just have not heard that from the Administration.

Chairman SHELBY. Ambassador Burns, do you have a comment?

Mr. BURNS. Senator Kirk, I just want to thank you for your first chart. In my written testimony, I also said that one of the issues we have to press the Iranians on now is the Marines that they

killed in 1983; the American Embassy personnel who died in 1983; Malcolm Kerr, president of the American University of Beirut, gunned down in Beirut in 1984 at the instigation of Iran. It is one of the issues that we have to pursue. Some of these issues are in Federal court where American citizens have sued the Iranian Government, and they deserve justice.

I would not advise making this conditional on the nuclear deal, but I would advise making it conditional on any resumption of relations with Iran in the future. And I think on balance we will be able to contain better this problem of Iran if they are non-nuclear than if they are a nuclear weapons power. It is another reason why I support the agreement.

Chairman SHELBY. Dr. Levitt, do you have another—

Mr. LEVITT. If I may, I would just point out to follow up on the last question and partially answer this one, breaking apart proliferation and terrorism sanctions does not exactly work, and the Administration has conceded this. Last year, David Cohen, then Under Secretary of the Treasury, now Deputy Director of the CIA, specifically touted the collateral counterterrorism benefit of counterproliferation sanctions targeting Iran's banking and oil sectors, and I quote, he said:

In fact, the success of our unprecedented Iran sanctions regime, including sanctions on Iranian financial institutions and Iran's ability to sell its oil, has had the collateral benefit of squeezing Tehran's ability to fund terrorist groups such as Hezbollah." That will no longer be the case.

Chairman SHELBY. Senator Kirk?

Senator KIRK. Mr. Chairman, I wanted to go through this chart here to show you the estimates of the Congressional Research Service on what Iran's notional terror budget is.

According to CRS, their support for Hezbollah is about \$100 to \$200 million per year, and support for Hamas is tens of millions of dollars per year. Support for the Assad regime in Syria is \$16 to \$15 million per year. Support for the rebels in Yemen, tens of millions of dollars per year.

The key question, when you add it all, it is between \$6 to \$16 billion per year as a state sponsor of terror. The key question to follow up from all this information is: Should they get \$100 billion in sanctions relief, what will become of the situation on the international terror front?

Chairman SHELBY. Go ahead.

Mr. ZARATE. They would be enriched. They would be emboldened. They would add to the budget that they have already allocated for these groups. These groups, hearing from them directly, Secretary General Nasrallah from Hezbollah has said he expects more support from the Iranians. So I think we should take the Iranians and their proxies at their word. They are going to profit from this deal, and we have got to do things to mitigate the risk of that if this deal moves forward. There is no question. And I think shrugging our shoulders, assuming that it is a cost of the deal, is not good enough.

Mr. DUBOWITZ. Senator Kirk, what has not been discussed as well is that in 6 to 12 months the U.S. Treasury Department will be lifting sanctions on an entity called the "Execution of Imam Khomeini's Order," or EIKO, otherwise known as Setad in its Ira-

nian acronym. This is the holding company of the Supreme Leader of Iran. It is a \$95 billion holding company that would be de-designated by OFAC in 6 to 12 months, allowing the Supreme Leader freely to move \$95 billion through the formal financial system around the world.

So this is not just the \$100 billion in oil escrow funds. It is \$95 billion in a HoldCo that the Supreme Leader actually has. That is \$200 billion.

Just one point of clarification here. Under Secretary Szubin was talking about these accounts, and it is now down to \$56 billion. The Administration is trying to have an argument both ways. If that money is only going to be spent on the economy and not on terrorism, then that \$56 billion also includes about \$25 billion that the Chinese are going to spend on upstream energy investments. It is going to include another \$20 billion that is being secured against nonperforming loans. That is money that will be spent on Iran's economy. So if it is Iran's economy, it is \$100 billion. If, on the other hand, the argument is from the Administration that the Iranians will spend that money on terrorism, then the Administration is right, \$100 billion is not available for terrorism, only \$56 billion is available for terrorism. But let us get our arguments straight: \$100 billion is available for Iran's economy. That is what is in those escrow funds. And as I said, \$95 billion is sitting in Khomeini's holding company available to fund exactly what you are talking about. And the Revolutionary Guards are going to be getting \$6.5 billion, representing almost 10 percent of their public budget, and they are the entity in control of Iran's overseas expansionism and its terrorist activities.

Chairman SHELBY. Dr. Levitt, do you have a comment?

Mr. LEVITT. You know, let us listen to what Hezbollah, Secretary General Hassan Nasrallah said about it. He is not only quite close to the regime, but his treasury recently exposed, has been holding weekly meetings with Bashar al-Assad to see about furthering their cooperation there.

Nasrallah noted that even under sanctions, Iran funded its allies and anticipated that now "a rich and powerful Iran, which will be open to the world," would be able to do even more. And his quote continued:

I say that in the next phase Iran will be able to stand by its allies, friends, the people in the region, and especially the resistance in Palestine and the Palestinian people more than at any time in the past, and this is what the others are afraid of.

Chairman SHELBY. Ambassador Burns, do you have a comment?

Mr. BURNS. Senator, I assume that whether it is \$100 billion or 56—and I am not competent to answer that question—some of this is going to have to go to contracts, as was explained in the last panel; some will inevitably go to revive the Iranian economy given the population's frustration with sanctions; and some is going to go to the IRGC. And you are right about that.

I do think that if there is congressional disapproval and we cannot fulfill the agreement and they become a threshold state, they are a more powerful force to exert mayhem in the Middle East than if we can freeze them and weaken them over the next 10 years.

So just thinking strategically, I think we have to combat this force and set up a containment regime. But if they are weakened by the nuclear agreement, we will have greater success, I would think, in doing that.

Chairman SHELBY. Thank you, Senator Kirk.

I thank all of you for appearing and your patience here today. A very important hearing, very important issue.

The Committee is adjourned.

[Whereupon, at 1:41 p.m., the hearing was adjourned.]

[Prepared statements and responses to written questions supplied for the record follow:]

PREPARED STATEMENT OF WENDY SHERMAN

UNDER SECRETARY, DEPARTMENT OF STATE

AUGUST 5, 2015

Good morning, Chairman Shelby, Ranking Member Brown and Members of the Committee. Thank you for this opportunity to discuss the Joint Comprehensive Plan of Action that the United States and our international partners recently concluded with Iran. The testimony from my colleague from Treasury, Acting Under Secretary Szubin, discusses how our work in crafting an international consensus around tough sanctions brought about the conditions that made negotiations possible. As Adam notes, JCPOA sanctions relief is tied to specific steps that Iran must take to demonstrate the peaceful nature of its nuclear program and verification of these steps, and we will absolutely retain the ability to snap back both our own national sanctions and U.N. sanctions.

The JCPOA is the end result of not 1 year or 2 years' effort, but a decade working to find the right approach to address the international community's concerns over Iran's nuclear program. The approach that finally succeeded in getting us to where we are today, with a clear plan for ensuring that Iran's nuclear program will be exclusively peaceful, combined the toughest sanctions ever put in place with the willingness to negotiate to find a diplomatic solution. Congress played a critical role in fashioning and supporting those sanctions that brought Iran to the negotiating table, and now Congress has an opportunity to further support this approach by backing its outcome, the JCPOA.

I will focus in my testimony on the specific ways in which the deal that we reached meets the President's stated goal of ensuring that Iran will not acquire a nuclear weapon and that Iran's nuclear program will be exclusively peaceful. I will outline how the JCPOA cuts off all of Iran's pathways to enough fissile material for a nuclear weapon, and will discuss the comprehensive verification and transparency mechanisms built into the deal. Finally, I will review the timeline that we have achieved in the JCPOA, which puts significant restraints on Iran's nuclear program for 10, 15, 20, and 25 years, and other restraints that last forever.

The JCPOA Cuts Off All of Iran's Pathways to Fissile Material for a Weapon

On July 14, the United States along with our partners in the P5+1 and the EU concluded a historic deal that, when fully implemented, will peacefully and verifiably prevent Iran from obtaining a nuclear weapon. This deal is the result of nearly 20 months of intensive negotiations since the P5+1 and Iran concluded the Joint Plan of Action in November 2013.

From the day that those talks began, we were crystal clear that we would not accept anything less than a good deal. A good deal would effectively close off all four pathways to enough fissile material for a nuclear weapon. That includes the two possible pathways via uranium enrichment at Natanz and Fordow, the plutonium pathway at the Arak heavy water reactor, and any possible covert pathway. This was our standard, and the JCPOA meets that standard.

The uranium enrichment pathways are addressed by substantially reducing the number of centrifuges enriching uranium at Natanz, ending enrichment at the underground Fordow facility, and reducing Iran's stockpile of enriched uranium.

Iran must remove two-thirds of its installed centrifuges for 10 years, reduce its stockpile of enriched uranium by 98 percent to 300 kilograms for 15 years, and cap uranium enrichment at 3.67 percent—far below the danger point—for 15 years. This combination will ensure a breakout time, the time required to produce enough fissile material for a weapon, to a year or more for at least 10 years.

The plutonium pathway is closed off by redesigning and rebuilding the Arak heavy water reactor so that it will be smaller and no longer produce weapons-grade plutonium. This is not a temporary conversion that could be easily reversed should Iran ever make a decision to try to break out to pursue enough plutonium material for a weapon. The core of the reactor will be removed and rendered unusable and the facility will rebuilt to a different design. In addition, all the plutonium-bearing spent fuel will be shipped out of the country for the life of the reactor. And Iran has committed to light-water reactors in the future.

The covert pathway is cut off in multiple ways, because Iran would need multiple facilities to covertly produce enough fissile material for a weapon. The normal IAEA safeguards will be substantially expanded to cover the entire uranium supply chain, from the mines and mills, to conversion and enrichment, to assure uranium cannot be diverted to a covert facility. A dedicated procurement channel will be established to oversee the acquisition of sensitive nuclear technologies needed for Iran's nuclear program, with the United States having the ability to approve or disapprove of any equipment. All centrifuge production will be continuously monitored, and the IAEA

will be able to track centrifuges from the time they are produced to ensure they are not diverted to a covert enrichment facility. In no other country does the IAEA have continuous monitoring of uranium production and centrifuge production, and these provisions will be in place for 25 and 20 years, respectively.

If we should suspect Iran is engaged in activities inconsistent with the JCPOA at any undeclared location in Iran, the IAEA can request access to that location and if we and our European colleagues agree that access is necessary, Iran must grant that access to the IAEA. The entire process cannot take more than 24 days. In no other country does the IAEA have assured access to undeclared locations. This provision gives us the assurance for the first time that Iran cannot delay access indefinitely to suspect locations.

Verification and Transparency

You have heard us say often that this deal is based on verification, not trust. Let me be clear here that we are not talking about the normal verification procedures that apply to all non-nuclear weapon state parties to the Non-Proliferation Treaty. We are talking about provisions that go far beyond that. As was just noted, international inspectors will have unprecedented continuous monitoring at Iran's declared nuclear facilities that will allow it to monitor the entire nuclear supply chain, from uranium production and centrifuge manufacturing to conversion and enrichment. The IAEA will also have access to undeclared locations if it has concerns about activities inconsistent with the JCPOA.

The IAEA will be permitted to use advanced technologies such as online enrichment monitoring, and electronic seals which report their status to inspectors, technologies developed in the United States.

The Timeline

One of the President's stated goals in these negotiations, and a guiding principle for those of us at the negotiating table, was that any comprehensive solution must ensure a breakout time of at least 1 year for 10 years, and then a gradual decrease of possible breakout time after that. This is what we have achieved with the JCPOA.

For a minimum of 10 years, Iran will be subject to strict limits on its facilities, domestic enrichment capacity, and research and development. Other provisions extend for 15 years, 20 years, and 25 years.

And under the Nuclear Non-Proliferation Treaty, Iran is permanently prohibited from pursuing a nuclear weapon—and the verification provisions of the safeguards associated with the NPT will remain in place forever, enhanced by the Additional Protocol as a result of the JCPOA.

The bottom line is that this deal does exactly what it was intended to do when we began formal negotiations 2 years ago. Remember that, 2 years ago, when our negotiations began, we faced an Iran that was enriching uranium up to 20 percent at a facility built in secret and buried in a mountain, was rapidly stockpiling enriched uranium, had installed over 19,000 centrifuges, and was building a heavy water reactor that could produce weapons-grade plutonium at a rate of one to two bombs per year. Experts estimated Iran's so-called breakout time—the interval required for it to have enough fissile material for a bomb—at 2 to 3 months.

This is the reality we would return to if this deal is rejected—except that the diplomatic support we have been steadily building in recent years would disappear because the rest of the world believes that we have achieved a deal that credibly resolves this problem.

The plan agreed to in Vienna will shrink the number of centrifuges, expand the breakout timeline, and ensure that facilities can only be used for peaceful purposes, and put the whole program under a microscope.

If Iran fails to meet its responsibilities, we can ensure that U.N. Security Council sanctions snap back into place, and no country can stop that from happening. If Iran tries to break out of the deal altogether, the world will have more time—a year compared to the 2 months prior to the negotiation—to respond before Iran could possibly have enough fissile material for a bomb. At that point, all the potential options that we have today would remain on the table, and we would also have the moral authority and international support that comes from having exhausted all peaceful alternatives.

As for Iran's other behavior, including its ongoing support for terrorism, its destabilizing activities in the region, its anti-Israel and anti-Semitic rhetoric and actions, and its dismal human rights record, the United States is under no illusions. These nuclear negotiations were never based on the expectation that a deal would transform the Iranian regime or cause Tehran to cease contributing to sectarian violence and terrorism in the Middle East. That is why we have made clear that we will

continue to enhance our unprecedented levels of security cooperation with Israel. And as Secretary Kerry confirmed earlier this week in Qatar, we will work closely with the Gulf States to build their capacity to defend themselves and to push back against malign Iranian influence. We will continue to take actions to prevent terrorist groups—including Hamas and Hezbollah—from acquiring weapons. We will maintain and enforce our own sanctions related to human rights, terrorism, WMD, and ballistic missiles. And we will continue to insist on the release of the U.S. citizens unjustly detained in Iran—Saeed Abedini, Amir Hekmati and Jason Rezaian—and for information about the whereabouts of Robert Levinson so he too comes home.

We all know that the Middle East today is undergoing severe stress due to violent extremism, challenged governance, and sectarian and political rivalries. But every one of those problems would be even worse if Iran were allowed to have a nuclear weapon. That's why the plan reached in Vienna is so important. We cannot accept a nuclear-armed Iran.

Now, some have said that if we only doubled down on sanctions we could force Iran to agree to dismantle its nuclear program. But that is a fantasy, as my colleague Acting Under Secretary Szubin from the Treasury Department will attest. The whole purpose of sanctions was to get Iran to the bargaining table and to create incentives for precisely the kind of good deal we were able to achieve in Vienna. Over 90 countries have issued public statements in support of the deal. That list includes all of the countries that participated in the negotiation as well as the six economies that steadily reduced their purchases of oil in furtherance of our sanctions. It includes the countries that stopped their imports of Iranian oil altogether, and the countries that could potentially be major trading partners of Iran but have sacrificed economically because we showed good faith in reaching a negotiated diplomatic solution. Each of these countries has stood with us and made tough choices to keep the international sanctions regime intact so that we could achieve a deal like the JCPOA. We need their support now as we move toward its implementation.

It is important to remember that the United States has had unilateral sanctions on Iran for many years, and yet its nuclear program continued to advance. President Obama's strategy was to push for stronger multilateral sanctions while keeping the door open to negotiations. Those sanctions forced Iran to pay a high price, but sanctions alone were not enough to make Iran change course. That required a diplomatic initiative that included strong support from our international partners.

If we walk away from what was agreed in Vienna, we will be walking away from every one of the restrictions we have negotiated, and giving Iran the green light to double the pace of its uranium enrichment, proceed full speed ahead with a heavy water reactor, install new and more efficient centrifuges, and do it all without the unprecedented inspection and transparency measures we've secured.

If we walk away, our partners will not walk away with us. Instead, they'll walk away from the tough multilateral sanctions regime they helped us to put in place. We will be left to go it alone and whatever limited economic pressure we could apply would be unlikely to compel Tehran to negotiate or to make any deeper concessions. They would instead push the program ahead, potentially forcing military conflict. And we will have squandered the best chance we have to solve this problem through peaceful means.

Make no mistake: we will never accept a nuclear-armed Iran. But the fact is that Iran has extensive experience with nuclear fuel cycle technology. We can't bomb that knowledge away. Nor can we sanction that knowledge away. Remember that sanctions did not stop Iran's nuclear program from growing steadily, to the point that it had accumulated enough low enriched uranium that, if further enriched, could be used to produce about 10 nuclear bombs.

The United States will always retain the right to take whatever steps necessary to protect our security and prevent Iran from acquiring a nuclear weapon. But we also have not been afraid to pursue the diplomatic approach. We negotiated arms control agreements with the Soviet Union when that nation was committed to our destruction, and those agreements ultimately made us safer. Likewise, the truth is that the Vienna plan will provide a stronger, more comprehensive, and more lasting means of limiting Iran's nuclear program than any realistic alternative.

Congress played a critical role in getting us to this point. Sanctions achieved their goal by bringing about serious, productive negotiations with Iran. Now Congress has a chance to approve a deal that will make our country and our allies safer; a deal that will keep Iran's nuclear program under intense scrutiny; a deal that will ensure that the international community remains united in demanding that Iran's nuclear activities must be wholly peaceful. It is a good deal for America—a good deal for the world—and it deserves your support. Thank you.

PREPARED STATEMENT OF ADAM J. SZUBIN
 ACTING UNDER SECRETARY OF TREASURY FOR TERRORISM
 AND FINANCIAL INTELLIGENCE, DEPARTMENT OF THE TREASURY
 AUGUST 5, 2015

Chairman Shelby, Ranking Member Brown, and Members of the Committee: Thank you for inviting me to appear before you today to discuss the Joint Comprehensive Plan of Action (JCPOA) that the United States and our negotiating partners concluded with Iran on July 14. It is an honor to appear alongside Ambassador Sherman. A foreign policy matter of such importance deserves a careful analysis. I am confident that an open and honest debate based on the facts will make evident that this deal will strengthen America's security and that of our allies.

Having spent more than a decade at the Treasury Department working to strengthen our diplomatic efforts by imposing sanctions pressure on Iran, I will focus on the global sanctions coalition built and led by the United States that gave us the leverage necessary to secure unprecedented nuclear concessions from Iran. I will then discuss the nature of the sanctions relief in this deal, and how the JCPOA is designed to keep pressure on Iran to fulfill its nuclear commitments. Last, I will explain the tough sanctions that will remain in place to combat a range of malign Iranian activity outside the nuclear sphere—including its support for terrorism and militant proxies in the Middle East, its missile program, and its human rights abuses.

The Impact of Our Sanctions: Bringing Iran to the Table

The powerful set of U.S. and international sanctions on Iran, and especially those imposed over the last 5 years, effectively isolated Iran from the world economy. The U.S. Government led this effort across two Administrations and with bipartisan backing in Congress. Together we obtained four tough U.N. Security Council resolutions, and built upon our longstanding primary embargo by enlisting the support of foreign partners from Europe to Asia to impose further pressure on Iran. This campaign yielded results. After years of intransigence, Iran came to the table prepared to negotiate seriously over its nuclear program.

To see the impact of the sanctions campaign, consider the following metrics. Today, the Iranian economy is estimated to be only 80 percent the size that it would have been, had it continued on its pre-2012 growth path. Consequently, it will take until at least 2022—even with sanctions relief—for Iran to get back to where it would have been absent our sanctions. Iran has foregone approximately \$160 billion in oil revenue alone since 2012, after our sanctions reduced Iran's oil exports by 60 percent. This money is lost and cannot be recovered.

Iran's designated banks, as well as its Central Bank, have been cut off from the world. The Iranian currency has declined by more than 50 percent. We maintained strong economic pressure throughout the 2-year negotiating period. Indeed, during that time, our sanctions deprived Iran of an additional \$70 billion in oil revenue, and Iran's total trade with the rest of the world remained virtually flat.

To achieve this pressure, international consensus and cooperation were vital. Around the world, views on Iran's sponsorship of groups like Hizballah and its regional interventions differ. But the world's major powers have been united in preventing a nuclear-armed Iran. Iran's major trading partners and oil customers joined us in imposing pressure on Iran, and paid a significant economic price to do so, based on U.S. sanctions and a clear path forward. The point of these efforts was clear: to change Iran's nuclear behavior, while holding out the prospect of relief if Iran addressed the world's concerns about its nuclear program.

The Nature and Scope of JCPOA Relief

As Ambassador Sherman has described, the JCPOA addresses these nuclear concerns by closing off Iran's pathways to a nuclear weapon and providing access to ensure compliance, while preserving leverage if Iran breaches the deal. If Iran fully complies with the terms of the JCPOA, and if the IAEA verifies their compliance, phased sanctions relief will come into effect.

To be clear: when the JCPOA goes into effect, there will be no immediate relief from United Nations, EU, or U.S. sanctions. There is no "signing bonus." Only if Iran fulfills the necessary nuclear conditions—which will roll back its nuclear program and extend its breakout time fivefold to at least 1 year—will the United States lift sanctions. We expect that to take at least 6 to 9 months. Until Iran completes those steps, we are simply extending the limited relief that has been in place for the last year and a half under the Joint Plan of Action. There will not be a cent of new sanctions relief.

Upon “Implementation Day,” when phased relief would begin, the United States will lift nuclear-related secondary sanctions targeting third-country parties conducting business with Iran, including in the oil, banking, and shipping sectors. These measures were imposed in response to the security threat from Iran’s nuclear program; accordingly, they will be suspended in exchange for verifiable actions to alleviate that threat.

As we phase in nuclear-related sanctions relief, we will maintain and enforce significant sanctions that fall outside the scope of this deal, including our primary U.S. trade embargo. Our embargo will continue to prohibit U.S. persons from investing in Iran, importing or exporting to Iran most goods and services, or otherwise dealing with most Iranian persons and companies. Iranian banks will not be able to clear U.S. dollars through New York, hold correspondent account relationships with U.S. financial institutions, or enter into financing arrangements with U.S. banks. Nor will Iran be able to import controlled U.S.-origin technology or goods, from anywhere in the world. In short, Iran will continue to be denied access to the world’s principal financial and commercial market. The JCPOA provides for only minor exceptions to this broad prohibition.

Countering Malign Iranian Conduct

As we address the most acute threat posed by Iran, its nuclear program, we will be aggressively countering the array of Iran’s other malign activities. The JCPOA in no way limits our ability to do so, and we have made our posture clear to both Iran and to our partners. This means that the United States will maintain and continue to vigorously enforce our powerful sanctions targeting Iran’s backing for terrorist groups such as Hizballah. In the last 2 months alone, for example, we designated eleven Hizballah military officials and affiliated companies and businessmen. We will also continue our campaign against Hizballah’s sponsors in Iran’s Islamic Revolutionary Guard Corps-Quds Force; Iran’s support to the Houthis in Yemen; its backing of Assad’s regime in Syria; and its domestic human rights abuses. We will also maintain the U.S. sanctions against Iran’s missile program and the IRGC writ large.

Let there be no doubt about our willingness to continue enforcing these sanctions. During the JPOA period, when we were intensely negotiating with Iran, we took action against more than 100 Iranian-linked targets for their WMD, terrorism, human rights abuses, evasion and other illicit activities.

Nor are we relieving sanctions on Iran’s Revolutionary Guard Corps, its Quds Force, any of their subsidiaries or senior officials. The U.S. designation of Quds Force commander Qassem Suleimani will not be removed, nor will he be removed from EU lists related to terrorism and Syria sanctions.

Sanctions will also remain in place on key Iranian defense entities, including Iran’s Ministry of Defense and Armed Forces Logistics (MODAFL), Defense Industries Organization, Aerospace Industries Organization and other key missile entities, including Shahid Hemat Industrial Group (SHIG) and Shahid Bagheri Industrial Group (SBIG). We will also retain sanctions on Iranian firms such as the Tiva Sanat Group, which has worked to develop a weapons-capable fast boat to be used by the IRGC-Navy, and Iran Aircraft Manufacturing Industrial Company (HESA), which manufactures unmanned aerial vehicles used by the IRGC, as well as third country firms that have assisted Iran’s missile and defense programs. Under the JCPOA, more than 225 Iran-linked persons will remain designated and subject to our sanctions, including major Iranian companies and military and defense entities and firms.

It is worth emphasizing that our sanctions authorities will continue to affect foreign financial institutions that transact with these more than 200 Iranian persons on our Specially Designated Nationals List, as well as persons who provide material or other types of support to Iranian SDNs. These measures provide additional deterrence internationally. For example, a foreign bank that conducts or facilitates a significant financial transaction with Iran’s Mahan Air, the IRGC-controlled construction firm Khatam al Anbiya, or Bank Saderat will risk losing its access to the U.S. financial system, and this is not affected by the nuclear deal.

Sanctions Snap Back

Of course, we must guard against the possibility that Iran does not uphold its side of the bargain. That is why, should Iran violate its commitments once we have suspended sanctions, we will be able to promptly snap back both U.S. and U.N. sanctions, and our EU colleagues have reserved the ability to do so with respect to their sanctions as well.

For U.S. sanctions, this can be achieved rapidly—in a matter of days—from smaller penalties up to and including the powerful oil and financial measures that were

so effective against Iran's economy. New measures could also be imposed if Iran were to violate its commitments and renege on the deal.

Multilateral sanctions at the U.N. also can be reimposed quickly, and the United States has the ability to reimpose those sanctions unilaterally, even over the objections of other P5 members.

To those with concerns that Iran can accumulate minor violations over time, it is important to clarify that if there are small violations, we can address them through a variety of measures—snapback does not have to be all or nothing. This approach gives us maximum flexibility and maximum leverage.

If sanctions snap back, there is no “grandfather clause.” While we have committed not to retroactively impose sanctions for legitimate activity undertaken during the period of relief, any transactions conducted after the snapback occurs are sanctionable. To be clear, there is no provision in the deal that protects contracts signed prior to snapback once snapback occurs, any prospective transaction is sanctionable.

JCPOA Relief in Perspective

Some have argued that sanctions relief is premature until Iran pursues less destructive policies at home and abroad, and that funds Iran recovers could be diverted for destructive purposes. But Iran's ties to terrorist groups are exactly why we must keep it from ever obtaining a nuclear weapon. The JCPOA will address this nuclear danger, freeing us and our allies to check Iran's regional activities more aggressively. By contrast, walking away from this deal would leave the world's leading state sponsor of terrorism with a short and decreasing nuclear breakout time. We are far better positioned to combat Iran's proxies with the nuclear threat off the table.

We must also be measured and realistic in understanding what sanctions relief will really mean to Iran. Estimates of total Central Bank of Iran (CBI) foreign exchange assets worldwide are in the range of \$100 to \$125 billion. Our assessment is that Iran's usable liquid assets after sanctions relief will be much lower, at a little more than \$50 billion. The other \$50–70 billion of total CBI foreign exchange assets are either obligated in illiquid projects (such as over 50 projects with China) that cannot be monetized quickly, if at all, or are composed of outstanding loans to Iranian entities that cannot repay them. These assets would not become accessible following sanctions relief.

Because Iran's freely accessible assets constitute the country's reserves, not its annual budgetary allowance, Iran will need to retain a portion of these assets to defend its currency and stability. Of the portion that Iran spends, we assess that the vast majority will be used to tackle a mountain of debts and domestic needs that at over a half trillion dollars are more than 10 times as large as the funds it can freely use. Iran will also likely need a meaningful portion of its liquid foreign exchange reserve assets to finance pent-up import demand, unify official and unofficial exchange rates, and maintain an adequate foreign exchange buffer against future external shocks. For reference, \$50 billion is roughly in line with the 5–10 months of imports foreign exchange buffer that comparable emerging markets countries and the IMF consider prudent. All the while, Iran's economy continues to suffer from immense challenges—due to factors including budget deficits, endemic corruption, dilapidated energy infrastructure, a poor business environment, and the reputational concerns of foreign companies. Let us also recall that President Rouhani, who rose to the presidency on a platform of economic revival, faces a political imperative to show meaningful economic gains to the Iranian population. The Supreme Leader's approval of the negotiations suggests his understanding of this need as well.

We are mindful that at least some of the funds Iran receives from relief could find their way to malign purposes. This prospect is inherent in any realistic nuclear deal, no matter its duration or terms. But therefore it is incumbent on us to intensify our work, alongside Israel and our regional allies, to combat these malicious proxies.

Alternative Approaches

Sanctions were a means to an end, and relief was a necessary part of any deal. The deal we have achieved in the JCPOA is a strong one. It phases in relief in exchange for verified Iranian compliance with nuclear-related steps, and has a strong snap-back built in. It would be a mistake for the United States to back away based on the misconception that it would be feasible to escalate the economic pressure in order to obtain a broader Iranian capitulation.

It is unrealistic to think that, with a broken international consensus and less leverage, we could somehow secure a “much better” deal involving Iran's capitulation

and the eradication of its peaceful nuclear infrastructure or the cessation of its support for longtime proxies such as Hizballah.

Our partners agreed to impose costly sanctions on Iran for one reason—to negotiate an end to the threat of a nuclear weapon-capable Iran. If we change our terms now, and insist that these countries now escalate sanctions when we have jointly addressed this threat through the JCPOA, then our ability to impose additional pressure will be severely diminished.

Iran's escrowed reserves are not in our hands, and much of the world is prepared to do business in Iran. If the United States were to walk away from this deal, and ask our partners to continue locking up Iran's reserves and maintaining sanctions, the consensus likely would fray, with unpredictable results. Rejecting the deal in pursuit of objectives over which there is far less international consensus and unity would allow the sanctions regime to unravel and our leverage to dissipate. And we would risk losing both a nuclear deal and the sanctions leverage.

Conclusion

Enforcing this deal, and securing the nuclear concessions Iran has made, will capitalize on our carefully built economic pressure strategy. The deal's terms accomplish our overarching goal. Blocking all of Iran's paths to a nuclear bomb makes us and our allies safer.

Congressional Testimony

The Implications of Sanctions Relief Under the Iran Agreement

The Honorable Juan C. Zarate

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**Hearing before the
United States Senate Committee on Banking, Housing,
and Urban Affairs
Washington, DC
August 5, 2015**



1726 M Street NW • Suite 700 • Washington, DC 20036

Chairman Shelby, Ranking Member Brown, and distinguished members of the Senate Committee on Banking, Housing, and Urban Affairs, I am honored to testify before you to discuss the sanctions implications of the recently announced Joint Comprehensive Plan of Action (JCPOA) between the P5+1 and Iran, otherwise known as the "Iran nuclear deal." This Committee has an important role in evaluating the deal as Congress considers the sanctions implications for this particular deal and also the long-term implications for the use of America's financial and economic power in national security.

I take this responsibility seriously given the gravity, stakes, and implications of this agreement and Congress's role in reviewing the Iran nuclear deal on behalf of the American people. The question of a nuclear-armed Iran is a critical security issue for the United States, our allies, the broader Middle East, the global non-proliferation regime, and has serious implications for the potential and future use of American power in all its forms.

I come to this issue with views born from relevant experience – as the first-ever assistant secretary of the treasury for terrorist financing and financial crimes until May 2005, and then as the deputy assistant to the President and deputy national security advisor for combatting terrorism (2005-2009). While in these positions, we shaped the financial constriction campaign against Iran starting in 2005, and confronted the world's leading state sponsor of terror.

I also come to this issue now as an outside expert, having written, taught, and spoken extensively about the use of sanctions and financial power in national security; counter-terrorism and transnational threats, strategy, and policies; and legal principles and constructs in national security decision-making, including in our coercive statecraft and diplomacy.

The task of negotiating a deal of this nature and complexity – with multiple parties and against an avowed enemy of the United States – has been a daunting and lengthy task. I know that those involved from the United States government – from multiple agencies and across two Administrations – have worked tirelessly on this issue.

And I know that all involved have been seeking a peaceful solution to the Iranian nuclear problem – through painstaking strategies of coercion, sanctions, and diplomacy. The financial and economic constriction campaign has been built methodically over the course of a decade to help drive the Iranian regime to the table and change the course of their nuclear program. Indeed, these efforts built on over three decades of sanctions against the Iranian regime for its support of terrorism, quest for a nuclear program, human rights abuses, and other dangerous activities.

These efforts have also been designed to constrain and isolate rogue Iranian behavior and protect the integrity of the U.S. and international financial systems. This was a monumental task, and there is no silver bullet that will get us everything we want in a deal.

Unfortunately, this is a flawed agreement. I have not been asked today to delineate all the gaps, problems, or challenges in the JCPOA, nor would I be qualified to do so. But I do want to point out three fundamental problems with the deal that frame my analysis:

1. **Problematic End State: Iran as a Nuclear Power.** The JCPOA does not ultimately constrain the Iranian nuclear program, but instead helps to expand and to legitimize it. The JCPOA moves fundamentally away from the agreed-upon baseline restrictions and demands of Iran that were long the basis of UN Security Council Resolutions (UNSCRs). Ultimately, the JCPOA stalls, enables, and then validates an Iranian nuclear program. After 10 years, the program will not be subject to any United Nations Chapter 7 scrutiny, and after 15 years, many of the key restrictions imposed will end. The provisions enabling advanced research and development, uranium enrichment activities, evolution toward the use of more sophisticated centrifuges, and the sunset provisions embedded in the agreement all contribute to a legitimated Iranian nuclear program.

These provisions are agreed absent clarity on Iran's prior attempts at militarization – “possible military dimensions” (PMDs) – and without a stricter inspection protocol or the allowance for American inspectors to be included on international inspection teams. Moreover, the arms and ballistic missile sanctions are scheduled to be lifted automatically after five and eight years, respectively, on the back of the JCPOA without account for Iran's belligerence, proliferation, or other dangerous behaviors, now or later.

With strategic patience, Iran can march toward a weaponized program with greater capabilities, breakout capacity, and more economic resources, resilience, and connectivity to the global oil markets and commercial system. Even if Iran complies with all elements of this deal, Iran will end up with an unfettered opportunity to break out and weaponize its nuclear program, overtly or covertly, along with an ability to arm itself and its allies more openly and aggressively. The end state of the agreement takes us far afield from the declared goal of successive administrations at the start of negotiations.

2. **Problematic Construct: Iran as Co-Equal.** The presumptions and processes of the JCPOA embed and define Iran as an equal party in pursuit of a peaceful nuclear program. Though a negotiating party should be treated fairly and with respect, it does not mean that the construct of the agreement should treat the parties equally. Iran has been the suspect party in the eyes of the international community, subject to strict UNSCRs and caught on several occasions in the past hiding elements of its nuclear program and its weaponization efforts. Iran should be required to prove the peaceful nature of its program and activities whenever challenged. It also does not mean that Iran should be treated as an aggrieved party when restrictions are placed on its program or questions asked. Instead, it should remain the suspect party in the eyes of the world's powers for the purposes of any deal.

Iran has been given a right to object, question, and stall any challenge to its nuclear program or application of sanctions. For example, it must be presented with evidence by the International Atomic Energy Agency (IAEA) and others if an inspection is requested; it can interrogate the information or object to “re-imposition” of sanctions; it sits on the new JCPOA appellate body, the “Joint Commission,” and can use procedural hurdles to delay; and it has the agreed-upon right to walk away from the deal unilaterally based on its perception that the JCPOA is not being honored.

Iran should be required to present information to answer legitimate questions and rebut reasonable assertions. The burden of persuasion and proof should always lie with Iran. The United States and her partners should not be put in the position of having to prove ab initio its concern or the basis for its question, having then to calculate whether and how to reveal sensitive information and intelligence to Iran (along with China and Russia). The structure, processes, and nature of this agreement give Iran the benefit of the doubt that it is pursuing a peaceful program, when the onus should remain with Iran throughout to prove the peaceful nature of its program, as constructed in the relevant UNSCRs. Importantly, Iran should not be given the unilateral right to withdraw from the deal when the world powers’ actions are subject to review and appeal under the JCPOA.

3. **Problematic Sanctions Relief: Constraints on U.S. Financial and Economic Power.** The sanctions relief provided is too front-loaded, does not account for the increased risks stemming from Iranian commercial and financial activity, and broadly constrains the U.S. government’s ability to use effective financial power against Iranian “non nuclear” national security risks. Despite the attempts to phase out various sanctions lists and retain a “snapback” provision, the JCPOA contemplates early relief by allowing for frozen Iranian funds (upwards of \$150 billion) to be released after Implementation Day without constraint and for many of the financial, oil, and commercial sanctions and restrictions to be lifted.

Though there will be reticence by legitimate actors to jump back into Iranian markets too quickly, the sanctions architecture that has been put in place methodically over the course of many years will be unwound in swaths and will be difficult to maintain once momentum grows to do business with and in Iran. Instead of targeted unwinding and control of related risks, the sanctions unwinding framework appears to be driven by a desire to help reintegrate and rehabilitate the Iranian economy. The cost of this deal was the dismantling of the sanctions architecture and the defanging of America’s financial and economic power against Iran.

I will focus my testimony on this sanctions relief framework and why this presents a fundamental flaw in the structure of the JCPOA. Fundamentally, the Iranian nuclear deal sacrifices the ability of the United States to use its financial and economic power and influence to isolate and attack rogue and problematic Iranian activity – beyond the nuclear program. Beyond simple sanctions relief, we have negotiated away one of our most important tools of statecraft – the very financial and economic coercion that helped bring the Iranian regime to the table.

Taking U.S. Financial and Economic Power Off the Table

In terms of sanctions relief, the most troubling question for Congress to consider is whether we have negotiated away the ability to use U.S. financial and economic power aggressively against the Iranian regime and economy – even to constrain “non nuclear” activities that present real and increasing threats.

Though “non nuclear” sanctions were supposedly off the table, the spirit and letter of the agreement may actually neuter U.S. ability to leverage one of its most powerful tools – its ability to exclude rogue Iranian actors and activities from the global financial and commercial system.

Paragraph 29 of the preface commits the parties to the following:

The EU and its Member States and the United States, consistent with their respective laws, will refrain from *any policy* specifically intended to directly and adversely affect the *normalization of trade and economic relations* with Iran inconsistent with their commitments not to undermine the successful implementation of this JCPOA. (Emphasis added)¹

This provision, which appears in the section related to sanctions, clearly expresses the intent of the JCPOA to help normalize trade and economic relations with Iran as a cost of the deal. This text incorporated directly – along with the entire JCPOA – into the new UN Security Council Resolution (2231) passed unanimously on July 20, 2015, and the intent is reiterated explicitly in the preamble:

Emphasizing that the JCPOA is conducive to promoting and facilitating the development of normal economic and trade contacts and cooperation with Iran, and having regard to States’ rights and obligations relating to international trade.²

Ultimately, this means that the deal shields Iran’s economy from any efforts to exclude it from the global commercial and financial order. This power is at the heart of U.S. strategies post 9/11 to use financial and economic power to exclude rogue actors and illicit activities from the global order. With this constraint, the United States appears to have bound itself to restrict the type of effective tools it will use to affect Iranian behavior.

From the start of negotiations, what the Iranians wanted most was the ability to do business again – unfettered and plugged back into the global financial and commercial system. With a commitment to the reintegration of the Iranian economy on the back of the nuclear deal, the

¹ “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraph 29. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

² United Nations Security Council, “Resolution 2231 (2015),” July 20, 2015, page 2. (<http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf>)

Administration in essence put all effective sanctions on the table – those that can be used against Iranian support for weapons and technology proliferation, terrorism, human rights abuses, support for Assad, and even cyber attacks.

To understand this, one needs to appreciate why these financial and commercial measures were so effective in the first instance. These are not the “sanctions” of old. The financial constriction campaign which began against Iran in 2005, has proven effective over the past decade not because Iran has been hermetically sealed with naval blockades or particular individuals in the regime have been designated by the United Nations but because the United States – with support and actions from its allies and the private sector – helped unplug Iran from the global financial and commercial system.

This campaign was not built on the principles of classic trade embargoes. In this new construct, it did not matter if Iranians could buy Wrigley chewing gum on the streets of Tehran. Instead, the U.S. government, through the U.S. Treasury mounted a targeted financial campaign against key elements of the Iranian economy, which they needed to be able to do business effectively and give global reach to their activities. This began by targeting Iran's banks. The Iranians' use of their financial and commercial system to advance their nuclear weapons program and to support their military and intelligence operations was their Achilles' heel.

Like a hunter's trap, the financial campaign squeezed Iran's ability to access the international financial system in stages – actually feeding off of Iran's attempts to evade the program's heightened scrutiny. This approach took time, patience, and coordination within the U.S. government and with allies. The driving principle would be the same as what had been driving the isolation of illicit financial activity since 9/11 – protecting the integrity of the international financial system.

This campaign unfolded in stages, and the international environment would need to be conditioned to reject doing business with Iran. It would not be a financial shock-and-awe campaign. Instead, it took time, using a series of coordinated steps to isolate key elements of the Iranian economy, starting with its banks, then shipping, then insurance, and finally its oil sector. If anything, this campaign looked more like a financial insurgency than a traditional sanctions program. The Iranians themselves called it the “hidden war.”

The U.S. Treasury targeted Iran's banks by using Iran's own conduct – its proliferation activity, support for terrorist groups and Shia militias, and lack of anti-money-laundering controls, as well as the secretive and corrupt nature of the regime itself – as the cornerstone of the campaign. Iran's suite of suspect activities and attempts to avoid international scrutiny spurred the private sector to stop doing business with Iran. No reputable bank would want to be caught facilitating Iran's nuclear program or helping it make payments to Hezbollah terrorist cells around the world. If they did, they would be caught and sanctioned, with enormous reputational and business consequences.

This was a virtuous cycle of isolation that would reduce Iranian access to the international financial system more and more over time. The more the Iranians tried to hide their

identities or evade sanctions, the more suspect their transactions would appear and the riskier it would become for banks and other financial institutions to deal with them. Over time, bank accounts, lines of credit, and correspondent accounts were shut down. Iran's own actions to avoid scrutiny and obfuscate transactions would lead to greater financial constriction.

The Iranians deepened their greatest vulnerability. They were blending legitimate business transactions with illicit ones by funneling them through similar conduits. The Iranian regime often tried to hide the nature of its transactions and the identities of the Iranian government entities involved. They used front companies, cut-outs, and businessmen to acquire items and goods abroad that were hard to acquire, sanctioned, or tied to their nuclear ambitions or their weapons programs.

At the same time, the Iranian military was taking greater control of the nation's economy. Importantly, the predominant economic player was Iran's Islamic Revolutionary Guard Corps (IRGC), the elite military and security unit founded in 1979. The IRGC had gained more power and influence over time as the protector and exporter of the revolution and reported directly to the Supreme Leader, Ayatollah Ali Khamenei.

The IRGC – with its vast network – has embedded itself into more industries within Iran, ultimately building what has been called a veritable business empire.³ The regime and the IRGC's control of "charitable" foundations – known as *bonyads* – with access to billions of dollars of assets in the form of mortgages and business interests for veterans of the Iranian military – served as the baseline of its economic power, along with its ability to construct infrastructure through a corps of engineers. The reach of the IRGC's economic empire now extends to majority stakes in infrastructure companies, shipping and transport, beverage companies, and food and agriculture companies.⁴

In 2006, the IRGC acquired control of the Iranian telecommunications sector, and it began to control more elements of the nation's energy sector, including the development of pipelines and the valuable South Pars gas field. Some estimates note that the IRGC controls between 25 and 40 percent of Iran's gross domestic product (GDP).⁵ The IRGC is deeply involved in building Iran's infrastructure, pursuing projects such as deep-water ports and underground facilities important to Iran's defense and economy. These projects and industries give the IRGC political power and access to profits and capital, which has grown over time.

The IRGC is an economic juggernaut, with responsibilities relating to the development of weapons of mass destruction, missile systems, and overseas operations. It is deeply involved in the Iranian nuclear program, and its international arm, the Qods Force (IRGC-QF), is responsible for providing support to terrorist proxies and exporting the Iranian Revolution.

³ Frederic Wehrey, Jerrold D. Green, Brian Nichiporuk, Alireza Nader, Lydia Hansell, Rasool Nafisi, & S. R. Bohandy, *The Rise of the Pasdaran: Assessing the Domestic Roles of Iran's Islamic Revolutionary Guards Corps* (Washington, DC: RAND Corporation, 2009).

⁴ Emanuele Ottolenghi, *The Pasdaran: Inside Iran's Islamic Revolutionary Guard Corps* (Washington, DC: Foundation for Defense of Democracies, 2011), pages 44-45.

⁵ *Ibid.*, page 43.

Between them, the IRGC and its Qods Force are responsible for all the activities – weapons proliferation, terrorist support, and militant activity – for which Iran has been sanctioned in the past.

From the U.S. perspective, this blend of activities created the ultimate vulnerability, particularly the blurred lines between legitimate industry and support for Iran's nuclear program and terrorist groups. Wire transfers to terrorist groups and front companies flowing money into the coffers of the Revolutionary Guard were actions seen to threaten not only international security but also the integrity of the financial system. The nefarious nature of the activities, tied with the IRGC's attempts to hide its hand in many of its economic dealings and operations, made Iran's financial activity inherently suspect. Iran was making itself a prime target for the kind of financial isolation that fed off of the suspect conduct of rogue individuals, companies, and countries.

This constriction campaign focused not on squeezing or punishing the Iranian people, but instead on the financial infrastructure of the IRGC and the regime's profits. This was not an embargo intended to punish Iran for political delicts. The financial campaign targeted suspect Iranian financial and commercial activity in order to protect the international financial system from Iran's illicit financial activity.

As part of this effort, the U.S. Treasury made the argument directly to banks and companies around the world that it was too risky to do business with Iran, since no one really knew who was lurking behind corporate veils, pulling the strings, and accessing bank accounts and funding in Tehran. Would a bank be willing to risk its reputation by doing business, even inadvertently, with the IRGC or the Qods Force? Could their compliance officers guarantee that they knew who was behind their Iranian customers and transactions? Was trade with Iran worth the risk of access to American markets and banks?

All of this was amplified by parallel national legislation, UNSCRs, greater scrutiny from authorities around the world, and enforcement actions, led by the United States. The United States created a layered sanctions regime, with overlapping Executive Orders, designations, and eventually legislation, focused on the key elements of the Iranian regime and economy facilitating illicit and dangerous behavior. Each U.S. action spurred private sector and allied responses. The effects of this suspicion and isolation – driven by the private sector's risk calculus and government actions – had a real world impact.

Iranian banks, including its Central Bank, could no longer access the international financial system; its shipping lines could not traverse ports easily or obtain insurance to operate; and – thanks to congressional and international action – its oil sales and revenues were suspended. Iran had to create workarounds, evasion schemes, and bartering arrangements to continue to do business.

The regime and the economy were affected by cascading isolation and falling oil prices. The pressure was increasing – belying the notion that the United States has been facing a cracking sanctions coalition and system. Quite the opposite was occurring. The ayatollahs' concern over the strangulation of the Iranian economy and ultimately the regime – in concert with

lingering fears of the ghosts of the Green Movement – is what brought them to the negotiating table and launched them on the charm offensive that allowed them to turn the tables on the West. The sanctions pressure was not sustainable for the regime. President Rouhani admitted that these measures threatened to drive Iran into an economic “the Stone Age.”

The regime has needed access to capital, new technologies, and connectivity to the oil markets and the global economy to maintain and sustain their regime. That is what they lost over the past decade. That appears to be what they have gained and guaranteed in this deal.

In essence, the U.S. and her negotiating partners appear to have agreed to immunize Iran from any effective future financial or economic pressure – precisely the type that brought the regime to the table. And our negotiating partners – most champing at the bit to do business with Iran again – were willing to take advantage of this offering. Even during negotiations, China, which rejects the use of America’s global financial power and sanctions, and Russia, chafing under the weight of U.S. and EU sanctions, were all too willing to undermine U.S. economic leadership. China named Iran a founding member of its Asian Infrastructure Investment Bank (AIIB), and Russia quickly renewed its deal to sell SA-300 missiles to Tehran and then supported Iran’s demand to lift the arms and missile embargo.

We appear to be giving up this power by intending to “normalize” economic relations. This is a commitment we should not be making. This is highly problematic if the U.S. hopes to maintain any ability to use financial and economic power and suasion to affect Iranian behavior in the future – either to ensure compliance with any agreement or confront other elements of Iranian behavior. We will need to rely on sanctions and economic constriction campaigns even more aggressively to keep Iran honest in any deal and check its aggressive revolutionary agenda. Though Administration officials assure that it was clear at the table that all “non nuclear” sanctions would remain in effect, the United States will need to amplify its use of financial measures aggressively against key elements of the Iranian economy to deal with the increased risks of Iranian activity. It is not at all clear that this is well understood by all parties or part of our strategy.

Unfortunately, we have already begun this process of unwinding by agreeing to lift international sanctions under previous UNSCRs, without clarity on what restrictions will be placed on Iran moving forward in any new UNSCR. Once gone, the international architecture built via the UNSCRs will be difficult, if not impossible, to replace. This matters because the UNSCRs set the baseline for legal obligations for all Member States to use various national laws and authorities against Iranian illicit behavior, including those that have been reluctant to confront Iranian activity. It also matters because the new UNSCR commits the United States to others’ review of U.S. financial and other measures that may impact the Iranian economy. In this sense, it risks that the United States may appear isolated in any future action to sanction Iranian behavior outside the bounds of existing UNSCRs – and could have the Joint Commission established under the JCPOA reject U.S. actions against Iran.

If the United States now commits to the normalization of economic and trade relations, it may also be committing to a rehabilitation of the Iranian regime in the eyes of the global financial and commercial community. This proves highly problematic and undermines U.S.

credibility and power internationally if this is done without concern for the underlying concerns that drove its isolation in the first place – proliferation, support for terrorism, and development of weaponry and programs of concern controlled by the IRGC. These concerns will remain and increase even under the JCPOA.

This fundamental constraint of American financial power and economic influence against Iran in the JCPOA is exacerbated by structural, substantive, and other challenges enshrined in the unwinding framework.

Structural Problems with the Sanctions Relief Framework

There are structural problems in the JCPOA sanctions unwinding framework that undermine the ability of the United States to use sanctions to constrain Iranian behavior and monitor Iranian compliance.

The “snapback” framework itself proves problematic and does not preserve U.S. and international ability to leverage effectively the sanctions regime against Iran. Initially, the snapback is a blunt instrument. Given that “snapback” would reimpose the international sanctions regime and potentially threaten any deal, there will be a great deal of reluctance to trigger this provision. In addition, pursuant to UNSCR 2231, paragraph 11, the snapback provision applies only to “significant non-performance of commitments under the JCPOA.”⁶ This provision would not be seen as a tool to be used frequently or initially, and the incentive will be to negotiate away apparent or proven violations, even if deemed material yet not “significant.” The international community may have left itself no real recourse or sanction for incremental violations, which are likely and in line with past Iranian behavior. Realistically given the construct and consequences, only the most egregious violations that could be proven openly and convincingly to all parties would be subject to an international snapback.

How the snapback would work also affects its utility. If the snapback provisions allow the “grandfathering” of contracts signed before any snapback, the “snapback” loses its real-world effect to ensure compliance. Instead, such a provision might have the opposite impact intended by creating a “gold rush” incentive for commercial actors to get into the Iranian market and sign contracts as soon as possible. UNSCR 2231 seems to provide for such grandfathering in paragraph 14, noting that application of previous resolutions triggered by the UNSCR “do not apply with retroactive effect to contracts signed between any party and Iran or Iranian individuals and entities prior to the date of application...”⁷ Clarity on this question is critical to understand whether any “snapback” procedure will even prove useful.

Importantly, in the notion of “snapback,” there has always been an assumption that the financial pressure could simply be turned on and off like a light switch – perhaps informed

⁶ United Nations Security Council, “Resolution 2231 (2015),” July 20, 2015. (<http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf>)

⁷ United Nations Security Council, “Resolution 2231 (2015),” July 20, 2015. (<http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf>)

by a now-outdated view of sanctions. Unfortunately, the kind of global constriction campaign launched against the Iranians needed to be maintained and managed – like a garden infested with weeds. To maintain the pressure, the environment had to be tended to – with continual actions (quiet and public) against a set of Iranian financial and commercial targets that would try to find a way to access the international system

The financial argument at the heart of Iran's isolation has been that Iran is engaged in a host of nefarious and illegal activities that have been facilitated by its interactions with the international financial system. It is the threat to the international financial system of the illicit and suspect flows of money that is the baseline for Iran's isolation. If the perception is that this suspicion is gone and normalization is to follow, then the ability to use this kind of financial suasion to isolate Iran – even with snapback provisions that work – will be weakened.

The JCPOA also creates an Iranian snapback – a heckler's veto on any re-imposition of "nuclear" sanctions. The JCPOA explicitly states, "Iran has stated that if sanctions are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part."⁸

Thus, if the United States attempts to trigger the "snapback" procedures or imposes any new sanctions, Iran could object to the re-imposition of "nuclear" related sanctions and simply walk away from the agreement. The broad definition of "nuclear" sanctions as used in the JCPOA context to include proliferation-related concerns adds to the concern that Iranian objections could be broad and used often to temper aggressive use of any snapback. If Iran cheats and gets caught, and the international community attempts to punish Iran, Iran can threaten to back out of the deal and expand its nuclear program. This may create reluctance to punish Iran for any violations short of the most flagrant and egregious violations and create a permissive environment for Iranian cheating and stonewalling of the IAEA.

With the appellate processes in the agreement – to include the Joint Commission and the Working Group on Implementation of Sanctions Lifting – any U.S. sanction or related action to which Iran objects would be subject to review by the other parties – including Iran, China, Russia, and Europe. This could become a venue to constrain American financial power – especially if it implicates national commercial interests that are intertwined with Iranian interests. This process creates a geo-economic incentive for Iran to entangle the economic interests of the parties – so as to use economic investments and interests as both a sword and a shield against future financial and economic pressure. In this regard, the Iranians would take a page out of Saddam Hussein's playbook in fracturing the international sanctions regime by picking commercial winners and losers from key countries in the Oil-for-Food Program, as a diplomatic and economic hedge against future pressure.

Conduct-Based Sanctions and Concerns in the Unwinding Architecture

⁸ "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, paragraph 37. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

The JCPOA sanctions unwinding framework does damage to the conduct-based sanctions and measures that have been so effective and driven most of the listings and designations by the United States and the international community. Though the international sanctions architecture has been built largely around concerns about the Iranian nuclear program, there are key elements of this regime – and especially in the United States – that relate to other serious international security concerns, including WMD and weapons proliferation, grave human rights abuses, support for terrorism and militia groups causing instability in countries like Yemen, and money laundering, corruption, and illicit financial activity facilitating these activities. This is not just a U.S. construct, but one embedded in other national and international sanctions and measures.

The JCPOA attempts to unwind sanctions tied to the nuclear file, but the unwinding is difficult and complicated given the interconnected nature and effects of such sanctions. In some instances, the unwinding can be managed. For example, the Obama administration has tied the taint of Iranian and Syrian activity together. The Iranian and Syrian governments collaborate to support terrorism, proliferate weapons, and to crack down on political opposition and civilian populations. The U.S. government has taken actions to designate Iranian entities and individuals for supporting the Assad regime. Helpfully, the European Union followed suit on August 24, 2011, by designating the Qods Force for supporting Syrian security services to repress civilians. On October 12, 2011, the Treasury designated Mahan Air for helping the Qods Force to ship weaponry – especially to Syria. Though these kinds of sanctions will remain in place, others that touch on Iranian illicit activity will not.

In many other cases, the unwinding schedule and some of the scheduled delistings implicate actors and activities beyond the nuclear file. The planned delisting of some key Iranian entities that have facilitated a range of Iranian illicit activities and the cessation of sanctions prohibitions against them, especially financing, raises serious questions and challenges to U.S. ability to affect Iranian behavior of concern.

The reintegration of Iranian banks into the global financial system, including via the SWIFT bank messaging system, presents perhaps the most concerning issue. For example, Bank Sepah, scheduled to be delisted after Implementation Day (listed in Annex II, Attachment 3), has been designated under U.S. authorities not simply because of its facilitation of the Iranian nuclear program and procurement but also its role in financing arms and missile deals, activities that should remain a concern and are subject to UN sanctions.

The Central Bank of Iran (CBI) itself has been designated in part because of broader sanctions evasion facilitation on behalf of the Iranian banking system. Treasury issued a finding in November 2011, under Section 311 of the USA PATRIOT Act that Iran, as well as its entire financial sector including the CBI, is a “jurisdiction of primary money laundering concern.”⁹ Treasury cited Iran’s “support for terrorism,” “pursuit of weapons of mass

⁹ U.S. Department of the Treasury, Press Release, “Finding That the Islamic Republic of Iran is a Jurisdiction of Primary Money Laundering Concern,” November 18, 2011. (<http://www.treasury.gov/press-center/press-releases/Documents/Iran311Finding.pdf>)

destruction,” including its financing of nuclear and ballistic missile programs, and the use of “deceptive financial practices to facilitate illicit conduct and evade sanctions.”¹⁰ The entire country’s financial system posed “illicit finance risks for the global financial system.”¹¹ Those concerns persist and are not alleviated by the JCPOA or any Iranian commitments or actions.

The concerns about the integrity of the Iranian financial system are international in nature. The Financial Action Task Force (FATF), the global standard setting and assessment body for anti-money laundering, counter-terrorist financing, and counter-proliferation financing, has labeled Iran – along with North Korea – “a high risk and non-cooperative jurisdiction.” FATF has called on its members to “apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism (ML/FT) risks emanating from Iran.”¹²

As recently as June 26, 2015, FATF issued a statement warning that Iran’s “failure to address the risk of terrorist financing” poses a “serious threat ... to the integrity of the international financial system.”¹³ The international community recognizes that Iran – regardless of the status of the nuclear program – poses a real and serious threat to the integrity of the global financial system.

Overall, the JCPOA lifts U.S. sanctions on 21 out of the 23 Iranian banks designated for proliferation financing – including both nuclear and ballistic missile activity.¹⁴ The designation of Bank Saderat for terrorist financing will remain in place, but the sanctions against the Central Bank of Iran, which included concerns over sanctions evasion, will be lifted. Twenty-six other Iranian financial institutions blacklisted for providing financial services to previously-designated entities (including the National Iranian Oil Company (NIOC) which is being de-listed on Implementation Day) or for being owned by the government of Iran will also be delisted by the U.S. Treasury.¹⁵

¹⁰ Ibid.

¹¹ U.S. Department of the Treasury, Press Release, “Fact Sheet: New Sanctions on Iran,” November 21, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1367.aspx>)

¹² The Financial Action Task Force, Public Statement, “FATF Public Statement 14 February 2014,” February 14, 2014. (<http://www.fatf-gafi.org/countries/d-i/islamicrepublicofiran/documents/public-statement-feb-2014.html>)

¹³ The Financial Action Task Force, Public Statement, “FATF Public Statement 26 June 2015,” June 26, 2015. (<http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/public-statement-june-2015.html>)

¹⁴ U.S. sanctions on Ansar Bank and Mehr Bank are scheduled to remain in place. Sanctions on Arian Bank, Banco Internacional de Desarrollo, Bank Kargoshaee, Bank of Industry and Mine, Bank Melli, Bank Mellat, Bank Refah, Bank Sepah, Bank Tejarat, Europaisch-Iranische Handelsbank, Export Development Bank of Iran, First East Export Bank, First Islamic Bank, Future Bank, Iranian-Venezuela Bi-National Bank, Kont Investment Bank, Moallem Insurance Company, Persia International Bank, Post Bank, Sorinet Commercial Trust Bankers, and Trade Capital Bank (aka Bank Torgovoy Kapital ZAO) as well as the Central Bank of Iran (aka Bank Markazi jomhouri Islami Iran) will be lifted on “Implementation Day.” See Attachment 3. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_attachments_en.pdf)

¹⁵ Over the past decade, the Treasury Department has designated 51 banks and their subsidiaries inclusive of the 23 banks designated as proliferators, Bank Saderat which was designated for financing terrorism, and the Central Bank of Iran. With the exception of Bank Saderat, Ansar Bank, and Mehr Bank, all Iranian financial institutions will be de-listed on Implementation Day.

The JCPOA explicitly calls for the lifting of sanctions on “[s]upply of specialized financial messaging services, including SWIFT, for persons and entities ... including the Central Bank of Iran and Iranian financial institutions.”¹⁶ The European Union will lift SWIFT sanctions for the Central Bank of Iran and all Iranian banks¹⁷ originally banned from SWIFT.¹⁸

By allowing most of the Iranian banks back into the international financial order without dealing with their underlying conduct or controls, the United States is assuming the good faith of the Iranian regime and allowing the Iranian banking system to be used by the regime to finance and facilitate other issues of significant national security concern.

This concern applies similarly in the transportation sector. The delisting of the various elements of the Islamic Republic of Iran Shipping Lines (IRISL) and the National Iranian Tanker Company (NITC) removes a significant restriction on Iran’s ability to proliferate weapons and evade existing or future sanctions. Many IRGC businesses that were involved in the procurement of material for Iran’s nuclear and ballistic missile programs will be delisted as will some of the worst actors involved in Iran’s nuclear weaponization activities. Problematically, the EU will lift all of its counter proliferation sanctions on Iran. The future delisting of individuals tied to the Iranian nuclear program, procurement, and likely proliferation adds to the concern that underlying proliferation issues and concerns have been left aside in the wake of the nuclear deal.

The delisting of these individuals and entities that present risks related to proliferation as well as the nuclear program underscores additional risk to U.S. national security and the integrity of the financial system. It also calls into question whether the United States and international community are concerned about the integrity of the financial system and will defend it.

There is no question trying to unwind any effective and global sanctions regime is difficult. Unwinding intertwined, conduct-based sanctions for a regime that uses its economy and system for various dangerous and nefarious activities of international security concern is incredibly challenging. But tearing down sanctions bluntly – encompassing issues of proliferation and weaponization – without addressing the underlying conduct creates real risks and does damage to the ability to use the very same tools against Iranian individuals

¹⁶ “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraph 19(iv). (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

¹⁷ On Implementation Day, the EU will lift sanctions on the Central Bank of Iran and Bank Mellat, Bank Melli, Bank Refah, Bank Tejarat, Europäische-Iranische Handelsbank (EIH), Export Development Bank of Iran, Future Bank, Onerbank ZAO, Post Bank, and Sina Bank. On Transition Day, the EU will also lift sanctions on Ansar Bank, Bank Saderat, Bank Sepah and Bank Sepah International, and Mehr Bank. See Attachment 1, parts 1 and 2 and Attachment 2, parts 1 and 2. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_attachements_en.pdf)

¹⁸ The Council of the European Union, “Council Regulation (EU) No 267/2012 of 23 March 2012 Concerning Restrictive Measures against Iran and Repealing Regulation (EU) No 961/2010,” *Official Journal of the European Union*, March 24, 2012. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1406807228342&uri=CELEX:32012R0267>)

and entities in the future. Under the JCPOA construct, those tools against delisted entities may no longer be available.

Heightened Risks Under the JCPOA Sanctions Unwinding

The risks from Iran are real and will increase in an environment of sanctions unwinding under the JCPOA for a variety of reasons.

In the first instance, the unfettered return of funds to the Iranian regime will allow Tehran the flexibility to fund its allies and proxies and flex its muscles in the region. Iran will get a massive infusion of capital from initial sanctions relief, with estimates up to \$150 billion from frozen oil proceeds. There may be unaccounted-for money that is dislodged and returned to Iran – to include other frozen or blocked Iranian assets that are unreported or have remained in limbo in recent years due to the sanctions regime. Regardless of amounts available to the regime or percentage used to support terrorist proxies, there will be an infusion of terrorist financing into the global system. The Administration has acknowledged that some of the unfrozen funds will go to support terrorist and militant groups, like Hezbollah, HAMAS, Iraqi Shia militias, and the Houthis in Yemen. This is certainly the expectation of Iran's allies. Iran could even use its capital to support the Taleban and al Qaida, with which Iran has maintained a relationship and provided support in the past.

With Iran expanding its reach and presence throughout the Middle East, witnessing IRGC commanders and proxies positioned from the Golan to Yemen, there will be more concern about Iran's misuse of the economy, the benefits of sanctions relief, and the international financial and commercial system for dangerous and illicit activities. This infusion of cash will relieve budgetary constraints for a country that had only an estimated \$20 billion in fully accessible foreign exchange reserves prior to November 2013¹⁹ but was spending at least \$6 billion annually to support Assad.²⁰

The regime itself, and its core institutions like the Ministry of Intelligence and the IRGC, will benefit most immediately and deeply. Iran is a theocratic regime that controls the key elements of the economy, with the IRGC controlling the nation's largest construction company, much of its telecommunications sector, strategic sectors like shipping, and a large portion of the value on the Tehran Stock Exchange.

Economic forecasts prior to the announcement of the JCPOA based on expectations of the sanctions relief assessed that Iran's economic growth would likely stabilize around 2.6% in FY2015/16, and then accelerate to about 4% in FY 2016/17.²¹ In the second half of the

¹⁹ Mark Dubowitz & Rachel Ziemba, "When Will Iran Run Out of Money?," *Foundation for Defense of Democracies & Roubini Global Economics*, October 2, 2013.

(http://www.defenddemocracy.org/content/uploads/documents/Iran_Report_Final_2.pdf)

²⁰ Eli Lake, "Iran Spends Billions to Prop Up Assad," *Bloomberg*, June 9, 2015.

(<http://www.bloombergview.com/articles/2015-06-09/iran-spends-billions-to-prop-up-assad>)

²¹ Mark Dubowitz, Annie Fixler, & Rachel Ziemba, "Iran's Economic Resilience Against Snapback Sanctions Will Grow Over Time," *Foundation for Defense of Democracies & Roubini Global Economics*, June 2015.

decade, Iran's economic growth would likely average 3.5-4%. Depending on Iran's economic policy choices, in FY 2017/18, growth could reach 5-6%.

The IRGC has used the nation's banks, oil industry, infrastructure projects, and other nodes of the Iranian economy to profit, strengthen its hand, and repress internal threats to the regime. The mullahs have used their control of the economy – through *bonyads* and the Supreme Leader's vast financial network, known as Setad or EIKO, worth tens of billions of dollars to enrich themselves and exert more control over the country.

Despite the notion that the JCPOA resolves all "nuclear-related" concerns, it does not address real concerns over continued Iranian proliferation, to include missile and arms trade. With the allowance for an Iranian nuclear program, infrastructure, and research, the deal will likely increase (not decrease) the risk of proliferation – with potential Iranian trade and exchange with rogue third countries like North Korea.

The JCPOA de-lists several IRGC military research and development facilities. For example, EU sanctions on the Research Center for Explosion and Impact will be lifted after eight years. This entity was designated by the EU for connection to the possible military dimensions of Iran's nuclear program.²² Whether or not the IAEA has reached a broader conclusion that Iran's program is peaceful and this center is not engaged in weapons-related activities, the sanctions will be lifted.

The JCPOA will lift both U.S. and EU sanctions on Iran's commercial airline Iran Air, on which the Qods Force depends to "dispatch weapons and military personnel to conflict zones worldwide. ... The Quds Force will have access to newer, larger, and more efficient planes with which to pursue its strategic objectives."²³ Without financial constrictions or checks, Iran Air and other elements of the Iranian economy can be used to proliferate weapons and support the revolutionary activities of the regime beyond its borders.

The lifting of the arms and missile embargoes at the end of eight years exacerbates these concerns and serious risks. Whether or not the IAEA has determined that Iran's program is peaceful, Tehran will be permitted to engage in an expansion of its ballistic missile program after a maximum of eight years. Iran may also be able to expand its intercontinental ballistic missile program under the guise of satellite testing.

There will need to be vigilance – within the context of the JCPOA and outside its bounds – to the real potential of illegal and suspect Iranian procurement activities, which has been a part

(http://www.defenddemocracy.org/content/uploads/publications/Iran_economy_resilience_against_snapback_sanctions.pdf)

²² The Council of the European Union, "Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 Implementing Regulation (EU) No 961/2010 on Restrictive Measures against Iran," *Official Journal of the European Union*, December 2, 2011. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R1245>)

²³ Emanuele Ottolenghi & Saeed Ghasseminejad, "The Nuclear Deal's Impact on Iran's Revolutionary Guards," *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

of Iranian evasion in the past. Counter-proliferation concerns – and the financing that supports these activities – will actually increase over time.

With the IRGC in control of more of the Iranian economy, including its infrastructure, telecommunications, and oil sector, risks of doing business in and with Iran will increase. The regime will use its control of the economy not only to further enrich itself but also to suppress internal opposition brutally and ensconce its rule. The concerns over human rights abuses and regime kleptocracy will grow.

The IRGC intervenes in Iran's economy through three principal channels: The IRGC Cooperative Foundation (its investment arm), the Basij Cooperative Foundation, and Khatam al-Anbiya Construction Headquarters. The Khatam al-Anbiya (KAA), a massive IRGC conglomerate, was designated by the United States as a proliferator of weapons of mass destruction.²⁴ It is Iran's biggest construction firm and, according to my colleagues' estimates, "may be its largest company outright, with 135,000 employees and 5,000 subcontracting firms."²⁵ The value of its current contracts is estimated to be nearly \$50 billion, or about 12% of Iran's gross domestic product.²⁶ KAA has hundreds of subsidiaries in numerous sectors of Iran's economy including its nuclear and defense programs, energy, construction, and engineering. The company is also involved in "road-building projects, offshore construction, oil and gas pipelines and water systems."²⁷ EU sanctions against the company will be lifted after eight years, whether or not the IAEA concludes that Iran's nuclear program is peaceful.

These three holding companies are direct shareholders of almost three hundred known businesses. My colleagues at the Foundation for Defense of Democracies have created a database of these companies and board members and provided it to the U.S. government.²⁸ As a result of the IRGC's control of the economy – which has grown over time – and sanctions relief, the risk of regime control over the economy will grow. In addition, the reality and risks of Iranian sanctions evasion, money laundering, the lack of transparency, and other financial crimes – the subject of international concern and U.S. regulatory action against Iran under the Patriot Act Section 311 – will increase, not decrease over time.

²⁴ Department of State, Office of the Spokesman, "Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism," October 25, 2007. (<http://2001-2009.state.gov/r/pa/prs/ps/2007/oct/94193.htm>)

²⁵ Parisa Hafezi & Louis Charbonneau, "Iranian Nuclear Deal Set to Make Hardline Revolutionary Guards Richer," *Reuters*, July 6, 2015. (<http://www.reuters.com/article/2015/07/06/us-iran-nuclear-economy-insight-idUSKCN0PG1XV20150706>); Emanuele Ottolenghi & Saeed Ghasseminejad, "The Nuclear Deal's Impact on Iran's Revolutionary Guards," *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

²⁶ Benoît Faucon & Asa Fitch, "Iran's Guards Cloud Western Firms' Entry After Nuclear Deal," *The Wall Street Journal*, July 21, 2015. (<http://www.wsj.com/articles/irans-guards-cloud-western-firms-entry-after-nuclear-deal-1437510830>)

²⁷ Ibid.

²⁸ Iranian Official Journal, accessed July 20, 2015. (<http://www.gazette.ir/>)

Sanctions relief will increase risks over time, and Iranian foreign policy will continue to challenge and threaten U.S. interests. This makes the preservation and use of financial and economic power all the more important, with or without the JCPOA.

The Need for Economic and Financial Tools to “Push Back” against Iran

The dangers, challenges, and risks from Iran on a regional and global scale will only increase over time. In the wake of the JCPOA, Secretary of State Kerry has stated that we will need to “push back” against Iran’s provocative and dangerous policies and tactics. CIA Director John Brennan has said that the United States will “keep pressure on Iran” and “make sure that it is not able to continue to destabilize a number of the countries in the region.”²⁹

Indeed, the United States will need to push back, especially against increasing risks and threats from Iran. To do this, the United States will want to use its financial and economic tools and strategies to make it harder, costlier, and riskier for Iran to threaten the United States and our allies. This will mean devising and deploying aggressive strategies to exclude key elements of the Iranian regime and the IRGC, Qods Force, Ministry of Intelligence from the global financial and commercial system.

In many ways, the use of financial power and the strategies of financial and economic isolation, which have dominated the post 9/11 period, have become the national security tools of choice. This is especially the case where there are no military or kinetic solutions available and the United States needs to influence behavior and shape the environment well beyond its borders.

The United States has expanded the use of sanctions and preventive financial measures (like Section 311) in recent years to address a wider range of national security threats and risks – terrorist financing, proliferation, corruption/kleptocracy, organized crime, human rights abuses, money laundering, and most recently malicious cyber attacks. Iran, the leading state sponsor of terror, presents a special case where all of these risks apply and U.S. interests are threatened.

As noted above, the JCPOA does not alleviate these risks – and in fact, some of these threats will likely increase over time due to the loosening of financial and commercial restrictions on the regime in Tehran. Most would recognize that we must be able to use these sanctions and financial measures against Iran and that the JCPOA cannot mean that Iran can use the JCPOA as a shield against such measures in the future. We certainly cannot have negotiated “most favored nation” status to avoid the aggressive use of sanctions and financial measures to address growing threats from Iran. And it shouldn’t be that we have unilaterally disarmed by taking effective financial measures and strategies of economic exclusion off the table.

We must be sure of this. The United States will need to use the same types of financial

²⁹ “CIA Director Says US Will Keep Pressure on Iran over Nuclear Capabilities No Matter Outcome of Ongoing Talks,” *Fox News*, March 23, 2015. (<http://www.foxnews.com/politics/2015/03/23/cia-director-says-us-will-keep-pressure-on-iran-over-nuclear-capabilities/>)

strategies and campaigns to isolate rogue Iranian activity. If done well, this will inherently and necessarily affect the trade, commerce, and economy of Iran. If the intent is to maintain existing sanctions without enforcing them or to use symbolic designations as a foreign policy tool, then we will have given up one of our most important and innovative national security tools. If the procedures embedded in the JCPOA have created an alternate structure for the effective application of all U.S. sanctions against Iran in the future, then we have traded away our ability to use such tools whenever the United States deems necessary and appropriate. If there is not clarity with respect to all this, we may find our tools more limited, we may exacerbate divides in policy and approach between Europe and the United States, and we could find ourselves isolated as we attempt to use America's continued economic and global economic reach for national security purposes.

Indeed, we can and should use these financial and economic tools aggressively moving forward and should ensure that the JCPOA does not represent a functional surrendering of this power. Pushing back against Iran by the international community and the United States will mean the United States using financial tools aggressively to impact the Iranian regime. If based on core international principles and underlying Iranian illicit and dangerous conduct, there will be inherent international and market support. Congress should ensure that these authorities and power – to isolate Iran financially and commercially when necessary – are preserved and leveraged against Iran's illicit conduct and attendant risk.

Congressional Action: Leveraging U.S. Financial and Economic Power to Address the Risks from Iran

There are three critical principles for Congress to pursue, demand, and ensure related to sanctions and the JCPOA:

1. **Clarify the Deal.** Congress should ensure there is clarity in the JCPOA and in the execution of any sanctions unwinding plan. Most importantly, the United States needs to make clear to its negotiating partners and Iran that it will continue to use its financial and economic power aggressively to address real and perceived risks stemming from underlying suspect Iranian activity and actors. Many of the actions may overlap with prior "nuclear" sanctions and designations, and there must be a seriousness of enforcement of sanctions and vigilance against sanctions evasion, proliferation, and terrorist support. This will impact Iran's economy and trade, if done properly and with effect, and it's important for all parties to understand this now before the JCPOA is agreed and implemented.
2. **Maintain U.S. Power.** Congress should ensure the United States maintains as much financial and economic power and leverage as possible. If any deal is to succeed, the Iranians need to know that the United States can and will wield its financial and economic power aggressively to police compliance with the agreement. We should do what we can now to maintain our ability to use U.S. financial and economic reach to isolate rogue behavior and protect the integrity of the financial system. This not only allows us to make it harder, costlier, and riskier for Iran to engage in provocative,

dangerous, and suspicious activity, but it could be the only tool available to the United States to counter a more aggressive Iran around the world.

3. **Confront Risks.** Congress should mitigate the risks attendant to an enriched and emboldened regime in Tehran. This includes the real and admitted risks that the flow of unfrozen funds and the business deals and investments will be used by the regime to fund terrorist and militant proxies, prop up Assad and his brutality, further repress human rights in the country, fill the coffers of the mullahs and the Revolutionary Guard Corps, and continue a provocative and violent revolutionary agenda well beyond its borders. This may be seen by some as a perceived cost of any deal, but the attendant risks are not acceptable and must be confronted and mitigated. This will need to be done with a full suite of national powers and authorities, including our ability to isolate rogue Iranian activity from the global financial and commercial order.

With these three principles at the heart of the next steps, Congress and the Administration should consider aggressive steps and measures that leverage U.S. financial power and economic influence, based on accepted and adopted international standards. This could form the basis of a new strategy to address the real and dangerous risks stemming from Iran.

The United States should adopt a financial constriction campaign focusing on the IRGC, the Qods Force, the Ministry of Intelligence, and the core elements of the regime that engage in terrorist financing, proliferation of weapons and nuclear technology, and support to militias and activities that destabilize countries like Syria, Lebanon, Iraq, and Yemen. There will likely be overlap between prior nuclear sanctions and new sanctions and preventive measures, but doing this will test the notion that all parties understand that these kinds of measures were not on the table. Such an approach could also take from elements of key Iran sanctions legislation, like the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA), to leverage the potential for secondary sanctions against those companies or individuals who decide to do business with designated Iranian actors. We would need to be prepared to designate third-country companies willing to choose to do business with Iran over the United States.

There should be a recommitment to the elements of a non-proliferation regime and a dedicated strategy, focusing on the proliferation risks attendant to any deal with Iran and the continued challenges with North Korea. This is critical in the context of the increased risk of proliferation and the ongoing crisis in Syria and the brutality of the Assad regime, which reportedly continues to use chemical weapons despite the international agreement that supposedly emptied his stockpiles and ended his programs. This would include tighter export control enforcement, interdictions, and financial restrictions tied to suspect Iranian actors and activities – including Iranian banks. This would also require a recommitment to the application of Executive Order 13382 for those engaged in proliferation finance, as well as the foreign sanctions evader program under Executive Order 13608.

The increased risk of corruption, money laundering, and illicit financial activity should also be addressed explicitly. The elements of the Section 311 action against Iran and the CBI

should be reiterated and reinforced with a designation of “primary money laundering concern” against the class of transactions involving any Iranian bank. This will ensure that the global financial system accounts for the increased risks of Iranian banks being misused by the regime for a whole host of dangerous activities and movement of money.

This could be amplified with a program – led by the European Union – to create a monitoring system through SWIFT (akin to the Terrorist Financing Tracking Program) to track and analyze suspect Iranian banking transactions. Instead of the blunt unwinding measure of plugging all Iranian banks (minus a few) back into the global banking messaging system, a monitoring program could provide a “halfway” house for reintegration of Iranian banks over time while managing the risk of more Iranian money traversing the banking system.

The Global Magnitsky Human Rights Accountability Act could be used expansively to target the finances and holdings of the Iranian regime and those involved in gross human rights violations on its behalf. This would entail holding elements of the regime accountable for human rights violations (to include the investigation of the murder of Argentine prosecutor Alberto Nisman) but also might include a preemptive asset recovery venture against the mullahs and IRGC leadership for kleptocracy and embezzlement of the Iranian people's assets. This could be done in concert with key authorities and governments in Europe, where human rights are a major concern, and with global financial organizations like Transparency International, Interpol, and the World Bank Stolen Asset Recovery Initiative. Congress could also clarify and amplify the rights of American victims of Iranian-sponsored terrorism, especially their ability to attach Iranian funds for existing or future judgments.

These are just some of the measures that could be taken to confront the risks from Iran, clarify the contours of the JCPOA, and ensure the preservation of American leadership to protect both national security and financial integrity. Undertaking these types of steps – in whatever form – will likely be seen by diplomats as interfering with the JCPOA or any deal. Instead, they should be seen as necessary steps to enable any nuclear deal, temper market enthusiasm for doing business with a dangerous regime and jurisdiction, and preserve a key element of America's power and leverage against Iran and other rogues.

Effective sanctions and financial measures rely on accepted international norms, a dedication to the principles of financial integrity, and the reputational and real risks attendant to touching tainted goods, money, or actors. These measures – often relying simply on suasion instead of enforcement – depend on the psychology of markets and the expectations of legitimate actors. Regulation and enforcement – most often coming from the United States – can shape environments and reduce the resources, reach, and impact of our enemies.

The United States has led sanctions enforcement globally for the past two decades – whether with respect to countries like Iran and Sudan or illicit conduct like terrorist financing, money laundering, and kleptocracy. The world will continue to rely on this leadership, and global banks, multinational companies, and market actors will respond to legitimate U.S. actions to identify and isolate rogue activity.

Importantly, we should stop undermining the perception of our financial and economic power. We can't argue in the same breath that the "snapback" sanctions as constructed offer a real Sword of Damocles to be wielded over the heads of the Iranians for years while arguing that there is no way now for the U.S. to maintain the crippling financial and economic isolation which helped bring the Iranians to the table. We can still wield our financial and economic power. Others will follow our lead.

Conclusion

When the Iranians came to the table after President Rouhani's election to negotiate over the nuclear agreement, one Western diplomat based in Tehran told me in confidence, "You have won the war [using economic sanctions and financial pressure]." But he then asked, "Can you win the peace?"

I think and hope we can still "win the peace," but it will require using and leveraging the very same powers and authorities that helped bring the regime to the table. We must ensure that we have these financial and commercial authorities and suasion available in an era where such tools are critical to national security. We must also ensure that the JCPOA has not inadvertently empowered the regime in Tehran and taken one of America's most potent powers off the table.

Congressional Testimony

**The Implications of Sanctions Relief Under
the Iran Agreement**

Mark Dubowitz
Executive Director
Foundation for Defense of Democracies
Center on Sanctions and Illicit Finance

**Hearing before the
Senate Committee on Banking,
Housing, and Urban Affairs**

Washington, DC
August 5, 2015



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August 5, 2015

Chairman Shelby, Ranking Member Brown, members of the Senate Banking, Housing, and Urban Affairs Committee, on behalf of the Foundation for Defense of Democracies and its Center on Sanctions and Illicit Finance, thank you for the opportunity to testify.

I will focus my remarks in the “summary” section below on:

- (1) The Joint Comprehensive Plan of Action’s (JCPOA) major design flaws, which provide Iran with patient paths to nuclear weapons and greater ballistic missile, heavy weaponry, and economic capabilities;
- (2) The interplay between the P5+1 economic sanctions “snapback” and Iran’s “nuclear snapback” in limiting the ability of the United States to impose sanctions (a) to address Iranian non-compliance with the JCPOA and, (b) to punish Iranian illicit conduct in a range of non-nuclear activities such as support for terrorism; and,
- (3) How sanctions relief under the JCPOA benefits the most hardline elements in Iran including the Islamic Revolutionary Guard Corps (IRGC) and Iran’s Supreme Leader Ali Khamenei.

The full testimony elaborates on the flaws of the current JCPOA and provides recommendations on how it should be amended before Congress considers approving it. Parts 1 and 2 of the testimony provide an in-depth analysis of the nuclear and sanctions relief concerns, respectively, in the current JCPOA. These two sections expand upon the arguments laid out in the summary section below regarding Iran’s patient paths to a nuclear weapon and the unraveling of international and U.S. economic sanctions.

In Parts 3 and 4, I assess alternatives and provide recommendations on what Congress can do to improve the deal with Iran. This analysis begins on page 32. In these sections, I discuss the precedents for congressional disapproval of treaties and executive agreements, analyze the possible scenarios if Congress disapproves of this nuclear deal with Iran, and provide recommendations for specific amendments to the JCPOA.

I conclude by discussing how Congress can defend the sanctions architecture against its precipitous unraveling under the JCPOA so that the United States can maintain peaceful economic leverage to enforce this deal in the future.

SUMMARY

Patient Path to Nuclear Weapons

The JCPOA provides Iran with patient paths to a nuclear weapon and intercontinental ballistic missile (ICBM) capability over the next decade and a half. As I explain below in Parts 1 and 2 of the testimony, Tehran has to simply abide by the agreement to emerge as a threshold nuclear power with an industrial-size enrichment program; near-zero breakout time; an easier clandestine sneak-out pathway; an advanced long-range ballistic missile program, including ICBMs; access to advanced heavy weaponry; and a more powerful economy increasing immunized against Western sanctions.

First, on so-called “Implementation Day,” Iran will receive substantial sanctions relief with which it can defend its economy against future sanctions pressure. Iran may also use sanctions relief to increase its support for terrorism and other rogue regimes and to expand its conventional military power. The JCPOA front-loads sanctions relief, providing Iran with access to around \$100 billion in restricted oil revenues and reconnecting Iranian banks, including the Central Bank of Iran, back into the global financial system. Sanctions on Iran’s crude oil export transactions will be lifted, as will sanctions on key sectors of the Iranian economy including upstream energy investment and energy-related technology transfers, the auto industry, petrochemicals, and shipping, as well as the precious metals trade. This sanctions relief will enable Iran to build greater economic resilience against future pressure—both sanctions aimed at isolating other illicit financial conduct and so-called “snapback” sanctions in the event of Iranian nuclear non-compliance.

Then, after five years, or earlier if the International Atomic Energy Agency (IAEA) reaches a broader conclusion that Iran’s nuclear program is only for peaceful purposes, the international arms embargo will be lifted, meaning that Iran can also expand its conventional military capabilities and those of its proxies. Former Under Secretary of State for Political Affairs Nicholas Burns, one of the other witnesses at this hearing, noted one week before the announcement of the JCPOA that lifting the arms embargo “would be a great mistake. Iran is selling arms, giving arms, fueling civil wars in Yemen, in Lebanon, in Syria and Iraq, and so those arms prohibitions on Iran are very important.”¹ He also has explained that the arms embargo was put in place “for very good reason.” He continued that it is not in the interest of the United States “to see these arms embargos lifted from Iran. It is an issue that should not be part of these negotiations. ... I think we ought to maintain these U.N. embargos.”² In five years, however, they will disappear, giving Iran access to combat aircraft, attack helicopters, battle tanks, among other advanced weapons systems.

After eight years, and even earlier if the IAEA reaches a broader conclusion, restrictions on Iran’s ballistic missile development will lapse, despite recommendations from Chairman of the Joint Chiefs of Staff Gen. Martin Dempsey that “[u]nder no circumstances should we relieve pressure on Iran relative to ballistic missile capabilities and arms trafficking.”³

Between years eight and 15, restrictions on Iran’s nuclear activities will begin to lapse whether or not the IAEA has concluded that Iran’s nuclear program is entirely peaceful.

After ten years, the U.N. Security Council will close the Iranian nuclear portfolio and no longer be “seized” on the issue. The file will return to the IAEA, and Iran will be considered to have a normal, legal nuclear program. Iran will be converted from one-time nuclear pariah to nuclear partner. At that time, and especially after year 15 when Iran’s nuclear program will be poised for

¹ “Nicholas Burns on Iran Nuclear Deal,” *NBC News*, July 7, 2015. (<http://www.nbcnews.com/video/nicholas-burns-on-iran-nuclear-deal-479107651869>)

² “Iran Nuclear Talks Continue As Leaders Try To Work Out A Deal,” *Al Jazeera America News Daily*, July 7, 2015. (<http://america.aljazeera.com/watch/shows/live-news/2015/7/iran-nuclear-talks-continue-as-leaders-try-and-work-out-a-deal.html>)

³ Gen. Martin E. Dempsey, “Counter-ISIL (Islamic State of Iraq and the Levant) Strategy,” *Hearing before the Senate Armed Services Committee*, July 7, 2015. (<http://www.cq.com/doc/congressionaltranscripts-4718823?8>)

much greater expansion to industrial-size, Iran will be better positioned to stymie IAEA verification and monitoring and to avoid cooperating with IAEA inspections. The United States will have a greatly diminished economic sanctions capability to force the Iranian government back into compliance on remaining obligations and to enforce the deal against Iranian stonewalling of the IAEA. Indeed, the only choice at that point may be the use of U.S. military force against a much more powerful Iran to prevent it from building nuclear weapons.

Nuclear Snapback vs Sanctions Snapback

In addition to this “patient pathway,” the JCPOA also creates an Iranian “nuclear snapback” instead of an effective economic sanctions snapback. Throughout the negotiations, the Obama Administration assured the public and Congress that if Iran violated its nuclear commitments under the final deal, sanctions could be “snapped back” into place. This reflects a too-optimistic assessment of the following: the lag-time between the imposition of sanctions and market and Iranian reaction; the willingness of companies to terminate business relationships; the extent to which “grandfather” provisions would immunize international investments from snapback sanctions; and, the eventual impact on Iran’s economy. Given these factors, there is likely very little “snap” in snapback sanctions.

The current United Nations sanctions snapback architecture in the JCPOA further limits Washington’s ability to re-impose sanctions by creating a drawn out dispute resolution mechanism. The mechanism creates a 60-plus day delay between the time that the United States (or another P5+1 member) announces that a violation has occurred and the time that U.N. sanctions may be re-imposed.

The process is governed by a Joint Commission on which Iran sits as an equal voting member. The Obama Administration presumes that even if Russia and China were to take Iran’s side in a dispute, Washington could count on the votes of France, Britain, and Germany as well as the EU representative. This 5-3 vote breakdown assumes no geopolitical or domestic political changes in European countries. Is it not just as plausible that the United States will find itself on the Joint Commission not with President Holland and Chancellor Merkel but with new European leaders less amenable to a new U.S. president’s demands to snap back U.N. sanctions? Even though the U.N. snapback sanctions mechanism permits the United States to move unilaterally at the U.N. Security Council to overcome Chinese and Russian objections to snapbacks, it is difficult to imagine that Washington would act without the support of its key European allies.

Furthermore, as international companies reengage in the Iranian market, European countries may experience domestic economic pressure not to re-impose sanctions. These companies may have invested billions of dollars back into Iran and may be unwilling to walk away from those investments despite Iranian nuclear non-compliance.

As a result, in a scenario of Iranian non-compliance, Washington may face European leaders less supportive of U.S. positions, European companies heavily invested in and less willing to leave Iran, and the specter of Iran threatening to walk away from its nuclear commitments (the Iranian “nuclear snapback,” as discussed below). If Washington subsequently loses a vote in the Joint Commission, will Washington be willing to unilaterally escalate the matter to the U.N. Security

Mark Dubowitz

August 5, 2015

Council for further consideration?

Instead of an effective sanctions snapback, the JCPOA provides Iran with a powerful “nuclear snapback.” In three places, the JCPOA makes it clear that using snapback sanctions may lead to a cancelling of the agreement, with Iran walking away from its commitments and resuming its nuclear program. In short, it will be difficult to persuade our P5+1 partners to punish Iran for any violations short of the most flagrant and egregious because any punishment of a small-to-medium level violation may lead Iran to stop complying with the agreement. As discussed, Iran may also use an implicit—or explicit—threat of nuclear escalation to pressure U.S. allies not to support efforts to address Iranian non-compliance.

The United States may be left with a choice of either not addressing examples of minor-to-medium levels of cheating—notwithstanding that Iran historically has used incremental cheating to expand its nuclear program—or allowing Iran to walk away from the deal as the aggrieved party if Washington tries to re-impose sanctions.

Sanctions Relief Benefits Hardliners

The sanctions relief provided for under the JCPOA will benefit the most hardline element of the regime: Iran’s Islamic Revolutionary Guard Corps (IRGC) and Supreme Leader Ali Khamenei’s financial empire—a “shadowy network of off-the-books front companies,” according to the U.S. Treasury.⁴ The network, headed by an organization known as the Execution of Imam Khomeini’s Order (EIKO) or Setad, is reportedly worth \$95 billion.⁵ EIKO and its subsidiaries will be delisted by both the EU and United States on Implementation Day. Rather than benefit independent Iranian businesses, the sanctions relief may reinforce IRGC and state control of key sectors of Iran’s economy and the empowerment of Iranian oligarchs.

The European Union will lift sanctions against major IRGC-controlled entities like the IRGC Cooperative Foundation (the Guard’s investment arm) and Khatam Al Anbiya (the construction conglomerate); the United States will de-list four IRGC-linked banks on Implementation Day: Arian Bank, Bank Kargoshaee, Bank Melli, and Future Bank. In reference to Bank Melli, the U.S. Treasury Department has stated:

“Bank Melli also provides banking services to the IRGC and the Qods Force. Entities owned or controlled by the IRGC or the Qods Force use Bank Melli for a variety of financial services. From 2002 to 2006, Bank Melli was used to send at least \$100 million to the Qods Force. When handling financial transactions on behalf of the IRGC, Bank Melli has employed deceptive banking practices to obscure its involvement from the international banking system. For example, Bank Melli has requested that its name be removed from financial transactions.”⁶

⁴ Department of the Treasury, Press Release, “Treasury Targets Assets of Iranian Leadership,” June 4, 2013. (<http://www.treasury.gov/press-center/press-releases/Pages/jl1968.aspx>)

⁵ Steve Stecklow, Babak Dehghanpisheh & Yeganeh Torbati, “Khamenei Controls Massive Financial Empire Built on Property Seizures,” *Reuters*, November 11, 2013. (<http://www.reuters.com/investigates/iran/#article/part1>)

⁶ Department of the Treasury, Press Release, “Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism,” October 25, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx>)

Lifting sanctions on Bank Melli, among others, will provide the IRGC and Qods Force with renewed access to the international financial systems and an easier ability to finance their illicit activities. De-listed banks, including the Central Bank of Iran, will be allowed back onto the SWIFT financial messaging system, and Europe may increasingly become the economic destination of choice for regime-connected, corrupt, IRGC oligarchs.

Hampering Our Ability to Address Iran's Other Illicit Conduct

This “nuclear snapback” not only provides Tehran with the ability to immunize itself against both political and economic pressure and block the enforcement of the agreement, it also diminishes the ability of the United States to apply any sanctions, including non-nuclear sanctions, against the full range of Iran's illicit conduct.

The JCPOA effectively dismantles the U.S. and international economic sanctions architecture, which was designed to address the full range of Iran's illicit activities. As a result of these illicit activities, Iranian banks including the Central Bank of Iran (CBI) were banned from SWIFT. The JCPOA severely undermines these measures, but not because Iran has halted its financial crimes. If the United States finds, for example, that Iran is using its central bank to facilitate terror financing, as it has done in the past, will Washington be able to impose new sanctions? The JCPOA appears to provide Iran with grounds to walk away from the deal if any sanctions are imposed. Iran has already stated that it may “reconsider its commitments” under the JCPOA if “new sanctions [are imposed] with a nature and scope identical or similar to those that were in place prior to the implementation date, irrespective of whether such new sanctions are introduced on nuclear related or other grounds.”⁷ It seems improbable that the United States would be willing to reimpose sanctions on Iran's central bank, and pressure Europe to expel CBI from SWIFT, under any scenario short of the most egregious—especially if Iran threatens to walk away from the agreement and resume its nuclear activities.

The current JCPOA is deeply-flawed because it fails to permanently block the Islamic Republic's pathways to nuclear weapons; it is also dangerous for American national security because it degrades Washington's ability to use non-military means to protect its national security interests and its allies against a range of Iranian illicit and destabilizing activities. If the United States cannot use economic pressure effectively to address future Iranian nuclear non-compliance or to target the full range of Iran's illicit nuclear activities, military force may become the only means available to U.S. policymakers. As a result, the JCPOA may make war with Iran more not less likely, and when that war comes, Iran will be stronger and the consequences will be more severe.

⁷ Column Lynch, “Iran to United Nations; New Sanctions Could Kill Nuclear Deal,” *Foreign Policy*, July 28, 2015. (<https://foreignpolicy.com/2015/07/28/john-kerry-obama-administration-terrorism-human-rights-iran-to-united-nations-new-sanctions-could-kill-nuclear-deal/>)

PART 1: NUCLEAR FLAWS**FLAWED DEAL CONSTRUCTION: THE PATIENT PATHWAYS TO A BOMB**

The Joint Comprehensive Plan of Action is fundamentally flawed in its construction. Even if Iran doesn't violate the JCPOA, over time, it will have patient pathways to nuclear weapons, an ICBM program, access to heavy weaponry, an economy immunized against sanctions pressure, and a more powerful regional position where it can continue its destabilizing and aggressive behavior. Even if Iran abides by the deal, it can re-open and expand each of the pathways to a nuclear bomb.

Under the JCPOA, Iran will be permitted over the next 8.5 to 15 years to expand its nuclear program. The deal allows certain restrictions on Iran's nuclear activities to lapse after 8.5 and 10 years, and many additional restrictions to terminate after 15 years (see Figure 1). Additionally, once Iran has implemented its nuclear commitments under the JCPOA to reduce its operating centrifuges, reduce its low-enriched uranium stockpile, and modify the Arak heavy-water reactor, the international economic sanctions architecture will be nearly completely unwound (see Figure 2).

Figure 1: Iran's Nuclear Expansion

After Implementation Day, Iran can:	<p>Iran will retain its Arak heavy water reactor, albeit subject to modernization and redesigning.</p> <p>Enrichment capacity:</p> <ul style="list-style-type: none"> • Continue enriching uranium up to 3.67% at Natanz. • Enrich uranium using 5,060 IR-1 centrifuges in up to 30 cascades at Natanz. • Put surplus centrifuges in storage. • Maintain a stockpile of up to 300 kg of 3.67% enriched uranium. <p>Centrifuge R&D:</p> <ul style="list-style-type: none"> • Continue R&D, so long as it does not lead to increases in Iran's stockpile of low-enriched uranium (LEU). • Engage in limited enrichment R&D using advanced centrifuges. • Engage in uranium testing at Natanz. <p>Convert Fordow into a nuclear physics and technology center and will be open for "international collaboration."</p> <ul style="list-style-type: none"> • Retain 1,044 IR-1 centrifuges provided they are not using uranium, and operate 348 for the production of stable isotopes. • Maintain other cascades in "idle" position.
After Transition Day (8 years):	<p>Iran will seek ratification of Additional Protocol in Majles (Parliament).</p> <p>Iran can start building up to 200 IR-6 and IR-8 centrifuges per year.</p>

After 10 years, Iran can:	<p>Increase its enrichment capacity at Natanz.</p> <p>Expand R&D enrichment using advanced centrifuges.</p> <p>Expand testing of the IR-4 and IR-5 centrifuges.</p> <p>Enrich using advanced centrifuges and/or more than 5,060 IR-1 centrifuges at Natanz (unless otherwise specified in Iran's long-term, voluntary commitment with the IAEA).</p> <p>Breakout time drops to "almost down to zero," according to President Obama.⁸</p>
After 15 years, Iran can:	<p>Build additional heavy water reactors and stockpile heavy water.</p> <p>Build additional enrichment facilities.</p> <p>Enrich uranium and conduct uranium R&D at Fordow.</p> <p>Increase its uranium enrichment levels to above 3.67%.</p> <p>Engage in spent fuel reprocessing (Iran states that it intends not to but is not bound not to).</p> <p>Deploy, at an industrial-scale, advanced centrifuges at Natanz and Fordow and new facilities.</p> <p>Increase without limit its stocks of LEU.</p> <p>Build and/or operate facilities related to the conversion of scrap or fuel plates back to UF₆.</p>
After 20 years:	The "containment and surveillance" measures of rotors and bellows for Iranian centrifuges by the IAEA will lapse.
After 25 years:	<p>The IAEA will cease monitoring the production of uranium ore concrete from all such plants in Iran.</p> <p>Iran will no longer have to provide the IAEA with information that would allow the agency to authenticate Iran's inventory of uranium ore concrete or Iran's production or import of this material.</p>
Permanent restrictions:	<p>Iran has promised to ship-out all of Arak's spent fuel for the duration the reactor's life.</p> <p>Should Iran fail to attain a fuel-supply contract for its research reactor in Tehran (TRR), the P5+1 are required to provide Iran with near 20% U308 that will be used for fuel fabrication for the entire time the TRR remains in operation.</p>

⁸ "Transcript: President Obama's Full NPR Interview on Iran Nuclear Deal," *NPR*, April 7, 2015.
<http://www.npr.org/2015/04/07/397933577/transcript-president-obamas-full-npr-interview-on-iran-nuclear-deal>

Figure 2: Dismantlement of the International Sanctions Architecture

After Implementation Day:	<p>The EU will terminate sanctions on the following from Council Decision 2010/413/CFSP and Council Regulation 267/2012:</p> <ul style="list-style-type: none"> • Financial, banking, and insurance <ul style="list-style-type: none"> ◦ Financial messaging sanctions remain on the books but entities are de-listed and thus allowed back into SWIFT. • Oil, gas, and petrochemicals • Shipping, shipbuilding, and transport related to Islamic Republic of Iran Shipping Lines (IRISL) and civil aviation • Gold, precious metals, banknotes, and coinage • Metals are allowed through single procurement channel • Software is allowed through single procurement channel <p>The EU will amend counter proliferation-related sanctions consistent with what is permitted by the new UNSC resolution.</p> <p>The EU will remove designated entities (most major Iranian banks, including the Central Bank of Iran (CBI)) from its list.</p>
	<p>The United States will cease the application for non-US persons of the following sanctions:</p> <ul style="list-style-type: none"> • Financial and banking (including financial messaging services and transactions with CBI, National Iranian Oil Company, Naftiran Intertrade Company, and National Iranian Tanker Company (NITC)) • Insurance • Energy and petrochemicals • Shipping, shipbuilding, and port sectors • Gold and other precious metals • Software • Automotive <p>Remove designated entities including major banks (Melli, Mellat, Sepah, Central Bank of Iran), shipping companies, EIKO, and major oil and gas firms from its lists. Of the nearly 650 entities that have been designated by the U.S. Treasury for their role in Iran's nuclear and missile programs or for being owned or controlled by the government of Iran, more than 67% will be de-listed within 6-12 months.</p> <p>Terminate executive orders:</p> <ul style="list-style-type: none"> • 13574 prohibiting financial transactions with ISA designated entities. • 13590 prohibiting provision of goods and services to Iran's energy and petrochemical sectors • 13622 prohibiting transactions with NIOC and NICO. • Sections 5, 6, 7 and 15 of 13628 prohibiting goods and technology to expand Iran's domestic refined petroleum production. • 13645 prohibiting transactions in rials, transactions with the shipping sector, transactions with the automotive sector.

After 5 years:	The U.N. arms embargo will be lifted.
After Transition Day (8 years):	<p>The EU will terminate sanctions on the following:</p> <ul style="list-style-type: none"> • SWIFT (Most major Iranian banks including the CBI are permitted onto SWIFT after Implementation Day) • Shipping, shipbuilding, and transport related to the nuclear and missile technology control lists • Ballistic missiles <p>The EU will also remove additional banks (Saderat, Ansar, Mehr) and the IRGC, IRGC-QF, Qassem Soleimani, and nuclear and missile related entities from its counter proliferation lists.</p>
	<p>The United States will terminate the statutory sanctions.</p> <p>The United States will remove additional entities including:</p> <ul style="list-style-type: none"> • Some of those designated during the JPOA negotiations like Aria Nikan Marin Industry which sources goods for Iran's nuclear program and whose customers include Khatam Al Anbiya, and Iran Pooya, which supplies material for centrifuge production; • Two central figures in Iran's weaponization and nuclear activities, Fereidoun Abbasi-Davani and Mohsen Fakhrizadeh, the former head of the Atomic Energy Organization of Iran, and the AQ Khan of Iran's nuclear weapons development, respectively; • The Organization of Defensive Innovation and Research (SPND), an entity involved in research related to nuclear weapons; and • Jahan Tech Rooyan Pars and Mandegar Baspar Kimiya Company, which were involved in illicit procurement . <p>After eight years, only 25 percent of the nearly 650 entities that have been designated by Treasury over the past decade for their role in Iran's nuclear and ballistic missile program or for being owned and controlled by the Government of Iran will remain sanctioned.</p>
After Termination Day (10 years):	<p>The U.N. will no longer be "seized of the Iran nuclear issue."</p> <p>The EU will terminate all remaining sanctions in Council Decision 2010/413/CFSP and Council Regulation 267/2012</p>
Sanctions that remain after 10 years:	<p>EU human rights sanctions.</p> <p>U.S. terrorism and human rights sanctions (for example, U.S. sanctions on Bank Saderat and Qassem Soleimani, although neither will be under EU counter proliferation sanctions. Terrorism and Syria-related sanctions on Soleimani will remain.).</p> <p>No U.N. sanctions.</p>

The administration states that the goal of the nuclear deal is to cut off Iran's "four pathways to a nuclear weapon:" the two uranium pathways through Natanz and Fordow, the plutonium pathway at the Arak reactor, and the clandestine pathway.⁹

The JCPOA is fundamentally flawed in its design because if Iran abides by the deal, it can still re-open and expand each of these pathways.

During the first ten years, Iran can test advanced centrifuges in a way that does not accumulate enrichment uranium; however, after 8.5 years, Iran can commence R&D and testing with uranium in up to 30 IR-6's and IR-8's.¹⁰ After ten years, Iran can increase the number and type of centrifuges operating at the Natanz facility, further reducing the limited restriction on this pathway.

As restrictions on Iran's enrichment program lapse, Iran can operationalize an unlimited number of advanced centrifuges. These centrifuges can more easily be used in a clandestine program because they are more efficient than Iran's basic models, can enrich uranium to weapons-grade faster requiring a fewer number of machines, and can be housed in smaller, harder-to-detect facilities. Iran's breakout time—the amount of time it takes to enrich enough uranium for one bomb to weapons-grade—will begin to drop below the one-year breakout time after year 10 and hit near-zero breakout by year 13, according to President Obama.¹¹ Even if there is a "softer landing" on breakout time after year 10 than the president predicted, Iranian breakout time will fall to near-zero after year 15 given the end of restrictions on the type and quantity of centrifuge deployment, the accumulation of low-enriched uranium, and the enrichment of uranium above 3.67% to 20% and 60%.¹² As a result, Iran's nuclear program will no longer be at the one-year breakout time that the Obama Administration established as its benchmark.

Additionally, after fifteen years, Iran can build an unlimited number of advanced centrifuge-powered enrichment facilities.¹³ Iran will also be permitted to enrich uranium at its undergrounded facility at Fordow¹⁴—a facility possibly impenetrable to U.S. military strikes. Indeed, under the deal, Iran will be permitted to build multiple Fordow-type facilities. Thus, in a decade and a half, Iran will be on a path to an industrial-sized, widely-dispersed nuclear program

⁹ Ernest Moniz, "A Nuclear Deal that Offers a Safer World," *The Washington Post*, April 12, 2015. (https://www.washingtonpost.com/opinions/a-safer-iran/2015/04/12/ae3a7f78-dfae-11e4-a1b8-2ed88bc190d2_story.html)

¹⁰ "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, Annex I, paragraphs 32, 37, 38. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_nuclear_related_commitments_en.pdf)

¹¹ "Transcript: President Obama's Full NPR Interview on Iran Nuclear Deal," *NPR*, April 7, 2015. (<http://www.npr.org/2015/04/07/397933577/transcript-president-obamas-full-npr-interview-on-iran-nuclear-deal>)

¹² The JCPOA notes that Iran will only enrich to 3.67% for 15 years but does not specify the restrictions after that. Iran's enrichment levels after 15 years will be governed by its "voluntary commitments" in its long term enrichment and enrichment R&D plan, submitted to the IAEA. There are non-military uses for 20% and 60% enriched uranium, and therefore Iran may argue that it needs to enrich to those higher levels after 15 years. "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, Annex I, paragraphs 28 and 52. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_nuclear_related_commitments_en.pdf)

¹³ "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, Annex I, paragraph 31.

(http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_nuclear_related_commitments_en.pdf)

¹⁴ *Ibid.*, paragraph 45.

with an ICBM program and will have the capability to enrich very quickly to weapons-grade at hardened, buried under mountains, Fordow-type enrichment facilities.

After fifteen years, Iran can also build an unlimited number of heavy water reactors. The JCPOA prohibits Iran from building additional heavy water reactors for fifteen years and after that, relies on a non-binding Iranian intention to build only light water reactors. This intention might change.¹⁵ The deal also relies on Iranian intentions not to engage in spent fuel reprocessing,¹⁶ a process from which plutonium for a nuclear bomb can be recovered.

The only permanent restriction on Iran's ability to use its heavy water reactors to reprocess plutonium for weapons purposes is the requirement to ship all spent fuel out of Iran "for the lifetime of the reactor."¹⁷ When Arak is no longer operational, does this restriction also lapse? When Iran has multiple heavy water reactors and assesses that the United States has limited coercive options outside of military force to respond a violation of this ban, it may feel emboldened to retain spent fuel inside the country.

While abiding by the terms of the JCPOA, Iran can exercise strategic patience and wait patiently to open up these multiple pathways to nuclear weapons while building up immunity against economic sanctions, leveraging its nuclear snapback to constrain Western retaliation to violations, and increasing its regional power.

How would Iran achieve these objectives based on the JCPOA's deal terms?

1. Do the bare minimum to address the PMD issue and fulfill the initial nuclear commitments.

Iran is required to work with the International Atomic Energy Agency (IAEA) to resolve past and present issues of concern regarding the possible military dimensions (PMDs) of Iran's program.¹⁸ The IAEA will have tight deadlines to which it has to adhere in a politicized post-Iran deal environment. The IAEA will have limited time and space to resolve the outstanding issues. It remains unclear what will happen if the IAEA is not satisfied. What will be its path of recourse? Will Iran be required to make an expanded declaration of all of Iran's nuclear activities, including past activity, to set a credible baseline for monitoring and verification?

Iran has reportedly already refused to allow certain scientists and facilities to be included in the list requested during the negotiations. The bilateral IAEA-Iran agreement may reportedly include only one visit to Parchin.¹⁹ Will the IAEA be able to interview all of the scientists, visit all of the

¹⁵ Ibid., paragraph 16.

¹⁶ Ibid., paragraphs 18-19.

¹⁷ Ibid., paragraph 11.

¹⁸ Ibid., paragraph 66.; International Atomic Energy Agency, Press Release, "IAEA Director General's Statement and Road-Map for the Clarification of Past & Present Outstanding Issues Regarding Iran's Nuclear Program," July 14, 2015. (<https://www.iaea.org/newscenter/pressreleases/iaea-director-generals-statement-and-road-map-clarification-past-present-outstanding-issues-regarding-irans-nuclear-program>)

¹⁹ Louis Charbonneau & Arshad Mohammed, "Exclusive: Draft Deal Calls for UN Access to All Iran Sites – Source," *Reuters*, July 13, 2015. (<http://www.reuters.com/article/2015/07/14/us-iran-nuclear-deal-exclusive-idUSKCN0PN2NY20150714>)

sites, and see all of the documents to address their questions from the November 2011 IAEA report? What about questions that have arisen since that 2011 IAEA report? These appear not to be permitted under the “Roadmap for Clarification of Past and Present Outstanding Issues.”²⁰

2. Use sanctions relief to build economic resiliency and benefit the IRGC.

After Iran completes specific, but reversible, nuclear steps, most EU and U.S. economic sanctions will begin to unwind, and Iran can increasingly immunize its economy against future economic pressure. The economic impact of sanctions relief is likely to be substantial, starting slowly after a deal and building over time.

Economic forecasts prior to the announced deal based on expectations of the sanctions relief assessed that Iran’s economic growth would likely stabilize around 2.6% in FY2015/16, and then accelerate to about 4% in FY 2016/17. In the second half of the decade, Iran’s economic growth would likely average 3.5-4%.²¹ Depending on Iran’s economic policy choices, in FY 2017/18, growth might reach 5-6%.

The IRGC will be a significant beneficiary of the sanctions relief. Combined with the de-listing of IRGC officials and IRGC-linked entities, the relaxed banking standards will grant the Iranian regime the ability to move its money anywhere in the world. With EU sanctions also set to be lifted on major Iranian banks, Europe will become an economic free zone for Iran’s most dangerous people and entities.

3. Begin purchasing arms after the United Nations arms embargo terminates.

According to the U.N. Security Council resolution, the arms embargo will end in five years.²² After five years, Iran can begin purchasing “battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, [and] missiles.”²³ Iran can purchase these goods with the cash it has received through sanctions relief to build its own military capacities. Tehran may also illicitly provide these heavy arms to its allies and proxies.

²⁰ International Atomic Energy Agency, Press Release, “IAEA Director General’s Statement and Road-Map for the Clarification of Past & Present Outstanding Issues Regarding Iran’s Nuclear Program,” July 14, 2015.

(<https://www.iaea.org/newscenter/pressreleases/iaea-director-generals-statement-and-road-map-clarification-past-present-outstanding-issues-regarding-irans-nuclear-program>)

²¹ Mark Dubowitz, Annie Fixler, & Rachel Ziemba, “Iran’s Economic Resilience Against Snapback Sanctions Will Grow Over Time,” *Foundation for Defense of Democracies & Roubini Global Economics*, June 2015.

(http://www.defenddemocracy.org/content/uploads/publications/iran_economy_resilience_against_snapback_sanctions.pdf)

²² United Nations Security Council, “Resolution 2231 (2015),” July 20, 2015, Annex B, paragraph 5, page 100.

(<http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf>)

²³ Ibid.

4. Develop a long-range ballistic missile system after the termination of the ballistic missile sanctions.

U.N., U.S., and EU ballistic missile sanctions will be terminated.²⁴ Notably, the JCPOA permits this to happen after eight years or after the IAEA reaches a so-called “broader conclusion” that Iran’s program is entirely peaceful and contains no undeclared activities, “whichever is *earlier*.” (emphasis added). In short, whether or not the IAEA has determined that Iran’s program is peaceful, Tehran will be permitted to engage in an expansion of its ballistic missile program after a maximum of eight years. Iran may also be able to expand its intercontinental ballistic missile program under the guise of satellite testing. The U.S. Defense Department notes, “Iran has publicly stated it may launch a space launch vehicle by 2015 that could be capable of intercontinental ballistic missile ranges if configured as a ballistic missile.”²⁵

Even with the current sanctions in place, Iran reportedly has the “largest and most diverse” ballistic missile program in the Middle East.²⁶ The U.S. Defense Department has repeatedly assessed that Iran’s ballistic missiles could be “adapted to deliver nuclear weapons.”²⁷ Last year, Director of National Intelligence James Clapper testified before Congress that if Iran chooses to make a bomb, Iran would choose “a ballistic missile as its preferred method of delivering nuclear weapons.”²⁸ According to Clapper, these missiles are “inherently capable of delivering WMD.”²⁹ Why is Iran permitted to engage in ballistic missile development—the development of the likely delivery vehicle if Iran builds a nuclear warhead—*before* the international community is certain that Iran’s existing nuclear program is peaceful?

5. Reap additional economic and military benefits when additional sanctions terminate and more entities are de-listed by the United States and EU.

Of the nearly 650 entities that have been designated by the U.S. Treasury Department for their role in Iran’s nuclear and missile programs or for being owned or controlled by the government of Iran, more than 67 percent will be de-listed from Treasury’s blacklists within 6 to 12 months. After eight years, only 25 percent of the entities that have been designated over the past decade will remain sanctioned.

²⁴ “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, Annex V, paragraphs 19 and 20.1. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_5_implementation_plan_en.pdf); United Nations Security Council, “Resolution 2231 (2015),” July 20, 2015, Annex B, paragraph 3, page 99. (<http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf>)

²⁵ U.S. Department of Defense, “Unclassified Report on Military Power of Iran,” January 2014, page 1. (<http://freebeacon.com/wp-content/uploads/2014/07/iranmilitary.pdf>)

²⁶ Michael Elleman, “Iran’s Ballistic Missile Program,” *The Iran Primer*, accessed August 25, 2014. (<http://iranprimer.usip.org/resource/irans-ballistic-missile-program>)

²⁷ U.S. Department of Defense, “Unclassified Report on Military Power of Iran,” April 2010, page 10. (<http://www.iranwatch.org/sites/default/files/us-dod-reportmilitarypoweriran-0410.pdf>); U.S. Department of Defense, “Unclassified Report on Military Power of Iran,” April, 2012, page 1. (<http://fas.org/man/eprint/dod-iran.pdf>)

²⁸ James R. Clapper, “Statement for the Record: Worldwide Threat Assessment of the US Intelligence Community” *Testimony before the Senate Select Committee on Intelligence*, January 29, 2014, page 6. (<http://online.wsj.com/public/resources/documents/DNIthreats2014.pdf>)

²⁹ *Ibid.*

After eight years—whether or not the IAEA has determined that Iran’s nuclear program is entirely peaceful—additional significant EU sanctions will be lifted. These include sanctions on the IRGC, Quds Force, IRGC Air Force, and the Ministry of Defense. Additionally, the United States will lift sanctions on two central figures in Iran’s nuclear development: Fereidoun Abbasi-Davani and Mohsen Fakhrizadeh. Abbasi-Davani is the former head of the Atomic Energy Organization of Iran. Fakhrizadeh is the AQ Khan of Iran’s nuclear weapons development. The United States will also de-list—among other entities involved in Iran’s nuclear program—the Organization of Defensive Innovation and Research (SPND), an entity “primarily responsible for research in the field of nuclear weapons development.”³⁰

Additionally, Iran could argue that other “non-nuclear” sanctions should also be lifted under the JCPOA according to paragraph 26:

“The U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from imposing new nuclear-related sanctions. Iran has stated that it will treat such a re-introduction or re-imposition of the sanctions specified in Annex II, or such an imposition of new nuclear-related sanctions, as grounds to cease performing its commitments under this JCPOA in whole or in part.”³¹

Paragraph 29 of the preface states:

“The EU and its Member States and the United States, consistent with their respective laws, will refrain from *any policy* specifically intended to directly and adversely affect the *normalization of trade and economic relations* with Iran inconsistent with their commitments no to undermine the successful implementation of this JCPOA.”³² (emphasis added)

While paragraph 26 only refers to the imposition of new nuclear-related sanctions, Iran may be able to argue that U.S. terrorism-related sanctions to the extent they have any economic impact on Iran are in violation of the JCPOA because they block the normalization of trade and economic relations. For example, Iran could claim that the imposition of sanctions on Iranian banks for terrorist financing would impede normal trade and economic relations. Tehran also can threaten to use its “nuclear snapback” (described below) to persuade the EU and other countries not to comply with any new U.S. non-nuclear sanctions, complicating Washington’s ability to constrain and deter the full range of Iran’s illicit conduct.

6. Transform from a nuclear pariah to a nuclear partner.

After ten years, the United Nations will remove the Iranian nuclear file from its agenda and will “no longer be seized of the Iran nuclear issue.” At that time, Iran will no longer be under any Chapter 7 resolutions and will have a legitimate and legal nuclear program. Iran can also **build**

³⁰ Department of State, Media Note, “Additional Sanctions Imposed by the Department of State Targeting Iranian Proliferators,” August 29, 2014. (<http://www.state.gov/r/pa/prs/ps/2014/231159.htm>)

³¹ “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraph 26. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

³² Ibid., paragraph 29.

additional scientific knowledge because research and development restrictions will be lifted. Even prior to the lifting of restrictions on R&D, Iranian scientists can acquire knowledge and skills that can be used to move quickly to nuclear breakout at the time of Iran's choosing. Under the JCPOA, all parties also commit to cooperate on enhancing Iran's ability to respond to nuclear security threats "including sabotage,"³³ which may limit the use of cyber and other tools to counter Iran's nuclear expansion or to respond to Iranian noncompliance.

7. Use the threat of a "nuclear snapback" to ward off any attempt to use the sanctions snapback.

The JCPOA explicitly states, "Iran has stated that if sanctions are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part."³⁴ In effect, Iran has given advance notice that using snapback sanctions may lead to cancellation of the JCPOA. If the United States or any of its partners insist on re-imposing sanctions, Iran may simply walk away from the deal. If Iran cheats and gets caught, and the international community attempts to punish Iran, Iran can threaten to back out of the deal and expand its nuclear program. It is quite likely under such circumstances that the P5+1 will be reluctant to punish Iran for any violations short of the most flagrant and egregious violations. This would create a permissive environment for Iranian cheating and stonewalling of the IAEA.

8. Build an advanced centrifuge-powered, industrial-size nuclear program.

After fifteen years, the significant restrictions on Iran's nuclear program will have lapsed. Iran will be permitted to have:

- Multiple enrichment facilities;
- A near-zero breakout time with faster advanced centrifuges;
- An easier clandestine sneak-out with fewer machines deployed in smaller facilities;
- Plutonium reprocessing;
- A stockpile of enriched uranium to 20 or 60% levels; and,
- An expanded ballistic missile program.

9. Stymie IAEA inspections.

Throughout the duration of the JCPOA, Iran can delay IAEA inspections of suspected sites without facing consequences. The JCPOA creates a 24-day delay between a formal IAEA request to access a suspicious site and the date on which Iran must allow access. As former Deputy Administrator for Defense Nuclear Nonproliferation at the National Nuclear Security Administration William Tobey explains, "24 days ... [is] ample time for Iran to hide or destroy evidence."³⁵

³³ "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, Annex III, paragraph 10.2.

(http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_3_civil_nuclear_cooperation_en.pdf)

³⁴ "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, paragraph 37. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

³⁵ William Tobey, "The Iranian Nuclear-Inspection Charade," *The Wall Street Journal*, July 15, 2015. (<http://www.wsj.com/articles/the-iranian-nuclear-inspection-charade-1437001048>)

Former Deputy Director General for Safeguards at the IAEA Dr. Olli Heinonen explains that for small facilities, 24 days is enough time for Iran to “sanitize” suspected sites, including, for example, where Iran may be engaged in weaponization activities.³⁶ Iran is also likely to have developed contingency plans to respond to IAEA demands to visit these sites. According to Dr. Heinonen, Tehran may only need two days to remove nuclear equipment from a small facility³⁷ and remove any traces of uranium, which even environmental sampling may be unable to detect. As Dr. Heinonen notes:

“Time for ‘scrubbing’ takes on special salience in nuclear-related developments without nuclear material present. Some of the past concealment events carried out by Iran in 2003 left no traces to be detected through environmental sampling.”³⁸

10. Become a threshold nuclear weapons state.

While adhering to the letter of its commitments under the JCPOA, Iran will emerge in 15 years with multiple pathways to a nuclear weapon. Iran will have a powerful economy, immunized against sanctions pressure and increased military and regional power. Iran will likely be the dominant power in the region and a threshold nuclear weapons state. Iran will have achieved its goals through strategic patience by following the terms of the deal.

The JCPOA does not prevent a nuclear-armed Iran; rather it provides multiple patient pathways for Iran.

THE JCPOA'S IRANIAN NUCLEAR SNAPBACK

The JCPOA contains a weak enforcement mechanism. Throughout the negotiations, Obama Administration officials have explained that under a final deal, the United States and its allies would be able to re-impose sanctions quickly in order to punish Iranian non-compliance and bring Iran back into compliance with its nuclear commitments. This was the so-called “snapback” sanction.

Even as originally conceived, this enforcement mechanism was flawed³⁹ because there would likely be significant disagreements between the United States, European states, and members of the U.N. Security Council on the evidence, the seriousness of infractions, the appropriate level of response, and likely Iranian retaliation. In addition to this diplomatic hurdle, the snapback sanction mechanism was economically flawed because it took years to persuade international

³⁶ Bill Gertz, “Ex-IAEA Leader: 24-Day Inspection Delay Will Boost Iranian Nuclear Cheating,” *The Washington Free Beacon*, July 21, 2015. (<http://freebeacon.com/national-security/ex-iaea-leader-24-day-inspection-delay-will-boost-iranian-nuclear-cheating/>)

³⁷ Michael R. Gordon, “Provision in Iran Accord Is Challenged by Some Nuclear Experts,” *The New York Times*, July 22, 2015. (<http://www.nytimes.com/2015/07/23/world/middleeast/provision-in-iran-accord-is-challenged-by-some-nuclear-experts.html?referrer=&r=1&gwh=F74FAB44A324C6E6F96BB6460E6FBCDA&gwt=pay>)

³⁸ Olli Heinonen, “The Iran Nuclear Deal and its Impact on Terrorism Financing,” *Testimony Before the House Financial Services Committee, Task Force to Investigate Terrorism Financing*, July 22, 2015. (<http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=399373>)

³⁹ For more detail on the challenges of the “snapback” sanction, see “The ‘Snapback’ Sanction as a Response to Iranian Non-Compliance,” *Iran Task Force*, January 2015. (http://taskforceoniran.org/pdf/Snapback_Memo.pdf)

companies to exit Iran after they had invested billions of dollars; once companies re-enter the Iranian market, it will be difficult to get them to leave again. Just the other day, Foreign Minister Mohammad Zarif noted that the “swarming of businesses to Iran” is a barrier to the re-imposition of sanctions, and once the sanctions architecture is dismantled, “it will be impossible to reconstruct it.” Zarif boasted that Iran can restart its nuclear activities faster than the United States can re-impose sanctions.⁴⁰

Furthermore, sanctions impacted reputational and legal risk calculations of private companies evaluating potential business deals with an Iranian government, economy, and entities that had consistently engaged in deceptive and other illicit conduct. The question of risk and the integrity of Iran’s economy and financial dealings cannot be turned on and off quickly. The snapback sanction in the JCPOA also has an additional economic delay because it may grandfather in existing deals, providing an incentive for companies to move as quickly as possible to sign major long-term deals so that any existing contacts will not be subject to snapback sanctions.

The JCPOA further undermines the snapback sanction—the United States’ only peaceful enforcement mechanism—through the dispute resolution mechanism, which is governed by a Joint Commission comprised of the United States, EU, France, U.K., Germany, China, Russia and Iran. The mechanism creates a 60-plus day delay between the time that the United States (or another P5+1 member) announces that a violation has occurred and the time that United Nations sanctions may be re-imposed.⁴¹

If the United States believes that Iran has violated the deal, Washington will refer Iran to the Joint Commission, which consists of the P5+1, Iran, and an EU representative. If the issue cannot be resolved by consensus within the Joint Commission, after a process of 35 days, the United States can then unilaterally refer the issue to the U.N. Security Council. The Security Council must then pass a resolution (which the United States can veto) to continue the current sanctions relief. If that resolution is not passed within another 30 days, the previous U.N. sanctions will be re-imposed. The “snap” in “snapback” therefore takes more than two months. The mechanism also does not provide for any unilateral re-imposition of sanctions, nor does the U.N. Security Council resolution, Resolution 2231, which the Obama Administration pushed forward to a vote despite congressional requests to delay until after Congress had thoroughly reviewed the deal.⁴²

Furthermore, the resolution states that **the snapback mechanism is for issues of “significant non-performance,” implying that it would not likely be used for incidents of incremental**

⁴⁰ “Foreign Investments in Iran to Serve as Barrier for Sanctions Snapback – FM,” *Voice of the Islamic Republic of Iran, Radio Farhang* (in Persian), July 21, 2015. (Accessed via BBC Worldwide Monitoring)

⁴¹ “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraphs 36-37. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

⁴² Steny Hoyer, Press Release, “Hoyer: U.N. Security Council Vote Should Wait for Congressional Review Period,” July 17, 2015. (<http://www.democraticwhip.gov/content/hoyer-un-security-council-vote-should-wait-congressional-review-period>); House Committee on Foreign Affairs, Press Release, “Chairman Royce, McCaul to President on Iran Deal: UN Security Council Should Wait Until Congressional Review is Complete,” July 16, 2015. (<http://foreignaffairs.house.gov/press-release/chairmen-royce-mccaul-president-iran-deal-un-security-council-should-wait-until>); “Congress Leaders Ask White House To Delay UN Vote on Iran Deal,” *JTA*, July 17, 2015. (<http://forward.com/news/breaking-news/312210/congress-leaders-ask-white-house-to-delay-un-vote-on-iran-deal/>)

cheating. The Iranian regime has previously been inclined to cheat incrementally, not egregiously, even though the sum total of its incremental cheating has been egregious. The snapback provision incentivizes Iran to continue this behavior because there is no enforcement mechanism to punish incremental cheating.

More importantly, the JCPOA has armed Iran with its own nuclear “snapback” against attempts to re-impose U.N. sanctions in response to Iranian nuclear violations. The JCPOA explicitly states, “Iran has stated that if sanctions are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part.”⁴³

This nuclear snapback also is included in text relating to both EU and U.S. economic snapbacks:

“The EU will refrain from re-introducing or re-imposing the sanctions that it has terminated implementing under this JCPOA without prejudice to the dispute resolution mechanism provided for under this JCPOA. There will be no new nuclear-related UN Security Council sanctions and no new EU nuclear-related sanctions or restrictive measures.”⁴⁴

In addition:

“The U.S. Administration, acting consistent with the respective roles of the President and the Congress, will refrain from re-introducing or re-imposing the sanctions specified in Annex II that it has ceased applying under this JCPOA, without prejudice to the dispute resolution process provided for under this JCPOA ... [and] will refrain from imposing new nuclear-related sanctions. *Iran has stated that it will treat such a re-introduction or re-imposition of the sanctions specified in Annex II, or such an imposition of new nuclear-related sanctions, as grounds to cease performing its commitments under this JCPOA in whole or in part.*”⁴⁵ (emphasis added)

Finally, the JCPOA contains an explicit requirement for the EU and the United States to do nothing to interfere with the normalization of trade and economic relations with Iran:

“The EU and its Member States and the United States, consistent with their respective laws, will *refrain from any policy specifically intended to directly and adversely affect the normalization of trade and economic relations with Iran* inconsistent with their commitments not to undermine the successful implementation of this JCPOA.”⁴⁶ (emphasis added)

Iran can use these provisions to argue that any re-imposition of sanctions, even if implemented on non-nuclear grounds “adversely affects the normalization of trade and economic relations”

⁴³ “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraph 37. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

⁴⁴ Ibid, paragraph 26.

⁴⁵ Ibid.

⁴⁶ Ibid, paragraph 29.

and will challenge attempts by the EU or United States to re-instate sanctions on non-nuclear grounds. Iran will threaten to simply walk away from the deal and expand its nuclear program.

Even while incrementally cheating on its commitments, Iran could force the United States and Europe to choose between not strictly enforcing the agreement and abrogating the whole agreement. Given the normal political and diplomatic environment, which encourages parties not to undermine existing agreements, it is highly likely that the United States and Europe would choose not to address incremental cheating. Iran is likely to get away with small- and medium-sized violations, since both the United States and Europe are heavily invested in this deal and would only abrogate it for a major violation. **The JCPOA's language also provides Iran with an opening to insist that other non-nuclear sanctions measures, including Iran's inclusion on the state sponsor of terrorism list, hinders trade and therefore should be terminated.**

The JCPOA is flawed in its design; it contains no peaceful, effective means to enforce the deal and explicitly provides Iran with an opening for a nuclear snapback that it can use to characterize itself as the aggrieved party if the EU or U.S. re-imposes sanctions. This nuclear snapback could be particularly effective against the Europeans, who will be loath to do anything that leads to Iranian nuclear escalation, and on whose support the United States needs on the Joint Commission, at the U.N. Security Council, in a coordinated transatlantic snapback scenario of EU and U.S. sanctions, or, at a minimum, to comply with U.S. secondary sanctions. To neutralize the effectiveness of economic snapbacks, Iran could target Europe as the weakest link through threats of nuclear escalation or through inducements of substantial investment and commercial opportunities. And we must bear in mind that Iran needs only to move one of the three European nations in the talks or shake the EU consensus in order to undermine this enforcement mechanism.

PART 2: SANCTIONS RELIEF FLAWS

JCPOA & CHALLENGE TO CONDUCT-BASED FINANCIAL SANCTIONS

The JCPOA also dismantles the international economic sanctions architecture which was designed to respond to the full range of Iran's illicit activities, not only the development of Iran's illicit nuclear program. The United States has spent the last decade building a powerful yet delicate sanctions architecture to punish Iran for its nuclear mendacity, illicit ballistic missile development, vast financial support for terrorist groups, backing of other rogue states like Bashar al-Assad's Syria, human rights abuses, and the financial crimes that sustain these illicit activities. More broadly, a primary goal of the sanctions on Iran, as explained by senior Treasury Department officials over the past decade, was to "protect the integrity of the U.S. and international financial systems" from Iranian illicit financial activities and the bad actors that facilitated these.⁴⁷

The goal of sanctions was to provide the president with the tools to stop the development of an Iranian nuclear threshold capacity and also to protect the integrity of the U.S.-led global

⁴⁷ David Cohen, "The Law and Policy of Iran Sanctions," *Remarks before the New York University School of Law*, September 12, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1706.aspx>)

financial sector from the vast network of Iranian financial criminals and the recipients of their illicit transactions. This included brutal authoritarians, terrorist funders, weapons and missile proliferators, narco-traffickers, and human rights abusers.

Tranche after tranche of designations issued by the Treasury, backed by intelligence that often took months, if not years, to compile, isolated Iran's worst financial criminals. And designations were only the tip of the iceberg. Treasury officials traveled the globe to meet with financial leaders and business executives to warn them against transacting with known and suspected terrorists and weapons proliferators.⁴⁸ This campaign was crucial to isolating Iran in order to deter its nuclear ambitions and also to address the full range of its illicit conduct.

Following years of individual designations of Iranian and foreign financial institutions for involvement in the illicit financing of nuclear, ballistic missile, and terrorist activities,⁴⁹ Treasury issued a finding in November 2011 under Section 311 of the USA PATRIOT Act that Iran, as well as its entire financial sector including the Central Bank of Iran (CBI), is a "jurisdiction of primary money laundering concern."⁵⁰ Treasury cited Iran's "support for terrorism," "pursuit of weapons of mass destruction," including its financing of nuclear and ballistic missile programs, and the use of "deceptive financial practices to facilitate illicit conduct and evade sanctions."⁵¹ The entire country's financial system posed "illicit finance risks for the global financial system."⁵² Internationally, the global anti-money laundering and anti-terror finance standards body the Financial Action Task Force (FATF) also warned its members that they should "apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism (ML/FT) risks emanating from Iran."⁵³

As recently as June 26, 2015, FATF issued a statement warning that Iran's "failure to address the risk of terrorist financing" poses a "serious threat ... to the integrity of the international financial system."⁵⁴

The Section 311 finding was conduct-based; it would be appropriate, therefore, to tie the lifting of sanctions on all designated Iranian banks, especially the legislatively-designated

⁴⁸ Robin Wright, "Stuart Levey's War," *The New York Times*, November 2, 2008.

(http://www.nytimes.com/2008/11/02/magazine/02IRAN-t.html?pagewanted=all&_r=0)

⁴⁹ Treasury designated 23 Iranian and Iranian-allied foreign financial institutions as "proliferation supporting entities" under Executive Order 13382 and sanctioned Bank Saderat as a "terrorism supporting entity" under Executive Order 13224. U.S. Department of the Treasury, Press Release, "Treasury Cuts Iran's Bank Saderat Off from U.S. Financial System," September 8, 2006; (<http://www.treasury.gov/press-center/press-releases/Pages/hp87.aspx>) & U.S. Department of the Treasury, Press Release, "Treasury Designates Major Iranian State-Owned Bank," January 23, 2012. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1397.aspx>)

⁵⁰ U.S. Department of the Treasury, Press Release, "Finding That the Islamic Republic of Iran is a Jurisdiction of Primary Money Laundering Concern," November 18, 2011. (<http://www.treasury.gov/press-center/press-releases/Documents/Iran311Finding.pdf>)

⁵¹ Ibid.

⁵² U.S. Department of the Treasury, Press Release, "Fact Sheet: New Sanctions on Iran," November 21, 2011. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1367.aspx>)

⁵³ The Financial Action Task Force, Public Statement, "FATF Public Statement 14 February 2014," February 14, 2014. (<http://www.fatf-gafi.org/countries/d-i/islamicrepublicofiran/documents/public-statement-feb-2014.html>)

⁵⁴ The Financial Action Task Force, Public Statement, "FATF Public Statement 26 June 2015," June 26, 2015. (<http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/public-statement-june-2015.html>)

Central Bank of Iran, and their readmission onto SWIFT and into the global financial system, to specific changes in the conduct of these Iranian entities across the full range of Iran's illicit financial activities. However, the JCPOA requires the lifting of financial sanctions—including the SWIFT sanctions—prior to a demonstrable change in Iran's illicit financial conduct.

In the past, Washington has given “bad banks” access to the global financial system in order to secure a nuclear agreement. In 2005, Treasury issued a Section 311 finding against Macau-based Banco Delta Asia,⁵⁵ and within days, North Korean accounts and transactions were frozen or blocked in banking capitals around the world. North Korea refused to make nuclear concessions before sanctions relief and defiantly conducted its first nuclear test.⁵⁶ The State Department advocated for the release of frozen North Korean funds on good faith,⁵⁷ and ultimately prevailed. As a result, however, Washington lost its leverage and its credibility by divorcing the Section 311 finding from the illicit conduct that had prompted the finding in the first place. Undeterred, North Korea moved forward with its nuclear weapons program while continuing to engage in money laundering, counterfeiting, and other financial crimes.

Compromising the integrity of the U.S. and global financial system to conclude a limited agreement with North Korea neither sealed the deal nor protected the system. The JCPOA appears to repeat this same mistake by lifting financial restrictions on bad banks without certifications that Iran's illicit finance activities have ceased.

The JCPOA stipulates that of the nearly 650 entities that have been designated by the U.S. Treasury for their role in Iran's nuclear and missile programs or for being owned or controlled by the government of Iran, more than 67 percent will be de-listed from Treasury's blacklists within 6-12 months. This includes the Central Bank of Iran and most major Iranian financial institutions. After eight years, only 25 percent of the entities that have been designated by Treasury over the past decade will remain sanctioned. A number of the banks that are to be de-designated originally were designated for multiple reasons, not just nuclear, including for financing Iran's missile program (e.g. Bank Sepah), providing banking services to those banks designated for missile financing (e.g. Post Bank of Iran, EIH) or, in the case of the Central Bank of Iran, for multiple financial crimes as discussed above.

Many IRGC businesses that were involved in the procurement of material for Iran's nuclear and ballistic missile programs will be de-listed as will some of the worst actors involved in Iran's nuclear weaponization activities. Even worse, the EU will lift all of its counter proliferation sanctions on Iran. Although human rights-related sanctions will remain, and terrorism and Syria-related sanctions will remain on notorious Quds Force commander Qassem Soleimani,⁵⁸

⁵⁵ U.S. Department of the Treasury, Press Release, “Treasury Designates Banco Delta Asia as Primary Money Laundering Concern Under USA PATRIOT Act,” September 15, 2005. (<http://www.treasury.gov/press-center/press-releases/Pages/js2720.aspx>)

⁵⁶ David E. Sanger, “North Koreans Say They Tested Nuclear Device,” *The New York Times*, October 9, 2006. (<http://www.nytimes.com/2006/10/09/world/asia/09korea.html?pagewanted=all>)

⁵⁷ Juan Zarate, *Treasury's War: The Unleashing of a New Era of Financial Warfare*, (New York: Public Affairs, 2013), page 258.

⁵⁸ The Council of the European Union, “Council Implementing Regulation (EU) No 611/2011 of 23 June 2011 Implementing Regulation (EU) No 442/2011 Concerning Restrictive Measures in View of the

sanctions against the Qods Force itself will be lifted (although certain Syria-related sanctions will remain).

What is especially notable about the lifting of designations is that the Obama Administration has provided no evidence to suggest that these individuals, banks, and businesses are no longer engaging in the full range of illicit conduct on which the original designations were based. What evidence, for example, is there for the de-designation of the Central Bank of Iran, which is the main financial conduit for the full range of Iran's illicit activities, and how does a nuclear agreement resolve its proven role in terrorism and ballistic missile financing, money laundering, deceptive financial activities, and sanctions evasion? In other words, with the dismantlement of much of the Iran sanctions architecture in the wake of a nuclear agreement, the principle upon which Treasury created the sanctions architecture—the protection of the global financial system—is no longer the standard.

SWIFT: CASE STUDY IN THE JCPOA'S PRECIPITOUS SANCTIONS RELIEF

The sanctions relief provided to Iran through its re-admission into the SWIFT financial messaging system is a case study in the scale of precipitous sanctions relief afforded to Iran under the JCPOA. It is also a cautionary study in how difficult it will be to snap back the most effective economic sanctions.

The JCPOA obligates the United States, European Union, and United Nations to lift sanctions at two specific intervals: On "Implementation Day" when the IAEA verifies that Iran has implemented its nuclear commitments under the JCPOA to reduce its operating centrifuges, reduce its low-enriched uranium stockpile, and modify the Arak heavy-water reactor, among other requirements; and on "Transition Day" in eight years or when the IAEA has reached a "broader conclusion" that Iran's nuclear program is entirely peaceful, whichever comes first. This last clause is critical: **Even if the IAEA cannot verify the peaceful nature of Iran's program, Iran will receive additional sanctions relief.**

The JCPOA will provide Iran with more than \$100 billion in sanctions relief, if you include the funds reportedly tied up in oil escrow accounts, and as much as \$150 billion based on figures quoted by President Obama,⁵⁹ which presumably includes funds that are legally frozen and those to which banks have been unwilling to provide Iran free access, even though they weren't under formal sanctions. These funds could flow to the coffers of terrorist groups and rogue actors like Hezbollah, Hamas, Palestinian Islamic Jihad, Iraqi Shiite militias, the Houthis in Yemen, and Syrian President Bashar al-Assad's regime in Damascus. President Obama has claimed the

Situation in Syria," *Official Journal of the European Union*, June 24, 2011. (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:164:0001:0003:EN:PDF>); The Council of the European Union, "Council Implementing Regulation (EU) 790/2014 of 22 July 2014 Implementing Article 2(3) of Regulation (EC) No 2580/2001 on Specific Restrictive Measures Directed Against Certain Persons and Entities with a View to Combatting Terrorism, and Repealing Implementing Regulation (EU) No 125/2014," *Official Journal of the European Union*, July 23, 2014. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0790>)
⁵⁹ Jeffrey Goldberg, "'Look ... It's My Name on This': Obama Defends the Iran Nuclear Deal," *The Atlantic*, May 21, 2015. (<http://www.theatlantic.com/international/archive/2015/05/obama-interview-iran-isis-israel/393782/>)

money would not be a “game-changer” for Iran.⁶⁰ As Supreme Leader Ali Khamenei, however, stated in a speech less than one week after the JCPOA announcement, “We shall not stop supporting our friends in the region: The meek nation of Palestine, the nation and government of Syria ... and the sincere holy warriors of the resistance in Lebanon and Palestine.”⁶¹ This infusion of cash will relieve budgetary constraints for a country, which had only an estimated \$20 billion in fully accessible foreign exchange reserves prior to November 2013⁶² but was spending at least \$6 billion annually to support Assad.⁶³

The real prize for Iran in the JCPOA sanctions relief package is regaining access to SWIFT, (the Society for Worldwide Interbank Financial Telecommunication) a little-known, but ubiquitous banking system that has been off-limits to the country since March 2012. **Iran’s successful negotiation of the lifting of this sanction is a case study in how the JCPOA provides precipitous sanctions relief to Iran prior to a demonstrable change in Iranian financial practices.**

SWIFT is the electronic bloodstream of the global financial system. It is a member-owned cooperative comprising the most powerful financial institutions in the world, which allows more than 10,800 financial companies worldwide to communicate securely.⁶⁴

By 2012, SWIFT represented one of Tehran’s last entry points into the global financial system, as the United States and the European Union had sanctioned scores of banks, energy companies, and other entities under the control of the IRGC. In March 2012, SWIFT disconnected 15 major Iranian banks from its system in 2012 after coming under pressure from both the United States and the European Union.⁶⁵ It was a substantial blow to Tehran since SWIFT was not only how Iran sold oil but also how Iranian banks moved money. According to SWIFT’s annual review, Iranian financial institutions used SWIFT more than 2 million times in 2010.⁶⁶ These transactions, according to *The Wall Street Journal*, amounted to \$35 billion in trade with Europe alone.⁶⁷

⁶⁰ Barack Obama, “Press Conference by the President,” *Washington, D.C.*, July 15, 2015.

(<https://www.whitehouse.gov/the-press-office/2015/07/15/press-conference-president>)

⁶¹ “Iran Press Review 20 July,” *Foundation for Defense of Democracies*, July 20, 2015.

(<http://www.defenddemocracy.org/iran-press-review-20-july>)

⁶² Mark Dubowitz & Rachel Ziemba, “When Will Iran Run Out of Money?,” *Foundation for Defense of Democracies & Roubini Global Economics*, October 2, 2013.

(http://www.defenddemocracy.org/content/uploads/documents/Iran_Report_Final_2.pdf)

⁶³ Eli Lake, “Iran Spends Billions to Prop Up Assad,” *Bloomberg*, June 9, 2015.

(<http://www.bloombergview.com/articles/2015-06-09/iran-spends-billions-to-prop-up-assad>)

⁶⁴ “Company Information,” *SWIFT Website*, accessed July 20, 2015.

(http://www.swift.com/about_swift/company_information/company_information?rdct=t&lang=en)

⁶⁵ SWIFT, Press Release, “SWIFT Instructed to Disconnect Sanctioned Iranian Banks Following EU Council Decision,” March 15, 2012. (http://www.swift.com/news/press_releases/SWIFT_disconnect_iranian_banks)

⁶⁶ “Annual Review 2010,” *SWIFT Website*, accessed January 9, 2012, page 29.

(http://www.swift.com/about_swift/publications/annual_reports/annual_review_2010/SWIFT_AR2010.pdf)

⁶⁷ “Swift Sanctions on Iran,” *The Wall Street Journal*, February 1, 2012.

(<http://online.wsj.com/news/articles/SB10001424052970203718504577178902535754464>)

As a result of congressional legislation targeting SWIFT,⁶⁸ EU regulators instructed SWIFT to remove specified Iranian banks from the SWIFT network.⁶⁹ It was congressional pressure, and an unwillingness by Congress to accept arguments advanced by Obama Administration officials that such action would undercut the multilateral sanctions regime, which finally persuaded the Obama Administration and EU officials to act.

Today, the JCPOA explicitly calls for the lifting of sanctions on the “[s]upply of specialized financial messaging services, including SWIFT, for persons and entities ... including the Central Bank of Iran and Iranian financial institutions.”⁷⁰ EU will lift SWIFT sanctions for the Central Bank of Iran and all Iranian banks⁷¹ originally banned from SWIFT.⁷²

The nuclear deal also lifts U.S. sanctions on 21 out of the 23 Iranian banks designated for proliferation financing—including both nuclear and ballistic missile activity.⁷³ The designation of Bank Saderat for terrorist financing will remain in place, but the sanctions against the Central Bank of Iran will be lifted. Twenty-six other Iranian financial institutions blacklisted for providing financial services to previously-designated entities (including NIOC which is being de-listed on Implementation Day) or for being owned by the government of Iran will also be removed from Treasury’s blacklist.⁷⁴

⁶⁸ Senator Robert Menendez, Press Release, “Menendez Hails Banking Committee Passage of Iran Sanctions Legislation,” February 2, 2012. (<http://www.menendez.senate.gov/newsroom/press/menendez-hails-banking-committee-passage-of-iran-sanctions-legislation>)

⁶⁹ “Payments System SWIFT to Expel Iranian Banks Saturday,” *Reuters*, March 15, 2012.

(<http://www.reuters.com/article/2012/03/15/us-nuclear-iran-idUSBRE82E15M20120315>)

⁷⁰ “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraph 19(iv). (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

⁷¹ On Implementation Day, the EU will lift sanctions on the Central Bank of Iran and Bank Mellat, Bank Melli, Bank Refah, Bank Tejarat, Europäische-Iranische Handelsbank (EIH), Export Development Bank of Iran, Future Bank, Onerbank ZAO, Post Bank, and Sina Bank. On Transition Day, the EU will also lift sanctions on Ansar Bank, Bank Saderat, Bank Sepah and Bank Sepah International, and Mehr Bank. See Attachment 1, parts 1 and 2 and Attachment 2, parts 1 and 2. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_attachements_en.pdf)

⁷² The Council of the European Union, “Council Regulation (EU) No 267/2012 of 23 March 2012 Concerning Restrictive Measures against Iran and Repealing Regulation (EU) No 961/2010,” *Official Journal of the European Union*, March 24, 2012. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1406807228342&uri=CELEX:32012R0267>)

⁷³ U.S. sanctions on Ansar Bank and Mehr Bank are scheduled to remain in place. Sanctions on Arian Bank, Banco Internacional de Desarrollo, Bank Kargoshaee, Bank of Industry and Mine, Bank Melli, Bank Mellat, Bank Refah, Bank Sepah, Bank Tejarat, Europäische-Iranische Handelsbank, Export Development Bank of Iran, First East Export Bank, First Islamic Bank, Future Bank, Iranian-Venezuela Bi-National Bank, Kont Investment Bank, Moallem Insurance Company, Persia International Bank, Post Bank, Sorinet Commercial Trust Bankers, and Trade Capital Bank (aka Bank Torgovoy Kapital ZAO) as well as the Central Bank of Iran (aka Bank Markazi Jomhouri Islami Iran) will be lifted on “Implementation Day.” See Attachment 3. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/annex_1_attachements_en.pdf)

⁷⁴ Over the past decade, the Treasury Department has designated 51 banks and their subsidiaries inclusive of the 23 banks designated as proliferators, Bank Saderat which was designated for financing terrorism, and the Central Bank of Iran. With the exception of Bank Saderat, Ansar Bank, and Mehr Bank, all Iranian financial institutions will be de-listed on implementation day. Note, there is an inconsistency in Attachment 3. The Joint Iran-Venezuela Bank is listed as the same entry as Iran-Venezuela Bi-National Bank. On the SDN list, the two are listed with unique entries and different designations. FDD assumes, however, that both banks are being de-listed.

The Obama Administration is assuming that the SWIFT sanctions (and other economic sanctions) can be reconstituted either in a snapback scenario or under non-nuclear sanctions like terrorism. However, the JCPOA notes that Iran may walk away from the deal and abandoned its nuclear commitments if new sanctions are imposed: “Iran has stated that if sanctions are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part.”⁷⁵ This gives Iran an effective way to intimidate the United States, and in particular, Europe into not reinstating sanctions, except for the most severe violations.

The threat of this “nuclear snapback” will prevent a response to technical and incremental violations for fear that Iran will walk away from the agreement and escalate its program, provoking a possible military crisis. It will also be used to make it very difficult for the United States and EU to ever reimpose SWIFT sanctions, which the Iranian government is likely to see as an act of economic or financial war, and will threaten to retaliate accordingly. This nuclear snapback will be discussed in greater detail in a subsequent section.

THE IRGC: THE JCPOA’S BIG WINNER

The IRGC stand to be the greatest beneficiary from the economic relief granted under the JCPOA through both an improvement in Iran’s overall macroeconomic environment and through the dominance of the Revolutionary Guards in key strategic areas of the Iranian economy. Already, the sanctions relief provided as part of the Joint Plan of Action (JPOA) enabled Iran to move from a severe economic recession to a modest recovery. During the JPOA negotiations, Iran received \$11.9 billion in direct sanctions relief, including on major sectors of Iran’s economy such as the auto and petrochemical sectors, permission to trade in gold, and President Obama’s decision to de-escalate the sanctions pressure by blocking new congressional sanctions, rescued the Iranian economy and its rulers, including the IRGC, from a rapidly deteriorating balance of payments.⁷⁶

In 2014, Iran’s exports to Europe increased 48% year-over-year. Overall, between March 2014 and February 2015, Iran’s non-oil and gas exports increased 22%.⁷⁷ The JPOA facilitated imports from the EU through a relaxation of the bloc’s banking restrictions which increased the authorization thresholds for “non-sanctioned trade” ten-fold, from €40,000 to €400,000. Iran had better access to European goods, including spare parts for its automotive industry. The JPOA also suspended petrochemical sanctions; these exports rose 32% to \$3.17 billion.⁷⁸

⁷⁵ “Joint Comprehensive Plan of Action,” Vienna, July 14, 2015, paragraph 37. (http://eeas.europa.eu/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf)

⁷⁶ Jennifer Hsieh, Rachel Ziemba, & Mark Dubowitz, “Iran’s Economy: Out of the Red, Slowly Growing,” *Foundation for Defense of Democracies & Roubini Global Economics*, October 2014.

(http://www.defenddemocracy.org/content/uploads/publications/RoubiniFDDReport_Oct14.pdf); Jennifer Hsieh, Rachel Ziemba, & Mark Dubowitz, “Iran’s Economy Will Slow but Continue to Grow Under Cheaper Oil and Current Sanctions,” *Foundation for Defense of Democracies & Roubini Global Economics*, February 2015.

(http://www.defenddemocracy.org/content/uploads/publications/RoubiniFDDReport_FEB15.pdf)

⁷⁷ Emanuele Ottolenghi & Saeed Ghasseminejad, “Iran Sanctions Relief Sparks Growing Trade with Europe, Asia,” *Foundation for Defense of Democracies*, March 27, 2015. (<http://www.defenddemocracy.org/media-hit/Iran-sanctions-relief-sparks-growing-trade-with-Europe-Asia/>)

⁷⁸ *Ibid.*

Economic forecasts prior to the announcement of the JCPOA based on expectations of the sanctions relief assessed that Iran's economic growth would likely stabilize around 2.6% in FY2015/16, and then accelerate to about 4% in FY 2016/17.⁷⁹ In the second half of the decade, Iran's economic growth would likely average 3.5-4%. Depending on Iran's economic policy choices, in FY 2017/18, growth could reach 5-6%.

In addition to the improvement in Iran's macroeconomic picture, which reduces threats to the political survival of the regime, the big winner from the unraveling of European and American sanctions will be the IRGC, which will earn substantial sanctions relief. **The IRGC not only directs Iran's external regional aggression, its nuclear and ballistic missile programs, and its vast system of domestic repression; the Guards also control at least one-sixth of the Iranian economy.⁸⁰ Their control over strategic sectors of the Iranian economy—banking, energy, construction, industrial, engineering, mining, shipping, shipbuilding, amongst others—means that any foreign firms interested in doing business with Iran will have to do business with the IRGC.**

In anticipation of the sanctions relief in a final nuclear deal, President Rouhani's 2015 budget rewards the IRGC. It includes a 48% increase on expenditures related to the IRGC, the intelligence branches, and clerical establishment. Iran's defense spending was set to increase by one-third, to \$10 billion annually—excluding off the books funding.⁸¹ The IRGC and its paramilitary force, the *Basij*, are set to receive 64% of public military spending, and the IRGC's massive construction arm Khatam al-Anbiya (which will be delisted by the European Union and is the dominant player in key strategic sectors of Iran's economy) will see its budget double. Rouhani's budget also included a 40% increase (\$790 million) for Iran's Ministry of Intelligence.⁸² Iran's latest five-year plan, announced days before the JCPOA, calls for an additional increase in military spending to 5% of the total government budget.⁸³ With access to additional revenue around the corner and with the termination of the arms embargo just over the horizon, Iran knows how it will spend its new cash.

My colleagues at the Foundation for Defense of Democracies Emanuele Ottolenghi and Saeed Ghasseminejad have done an extensive review of the sanctions relief and the entities that will be

⁷⁹ Mark Dubowitz, Annie Fixler, & Rachel Ziemba, "Iran's Economic Resilience Against Snapback Sanctions Will Grow Over Time," *Foundation for Defense of Democracies & Roubini Global Economics*, June 2015. (http://www.defenddemocracy.org/content/uploads/publications/Iran_economy_resilience_against_snapback_sanctions.pdf)

⁸⁰ Parisa Hafezi & Louis Charbonneau, "Iranian Nuclear Deal Set to Make Hardline Revolutionary Guards Richer," *Reuters*, July 6, 2015. (<http://www.reuters.com/article/2015/07/06/us-iran-nuclear-economy-insight-idUSKCN0PG1XV20150706>)

⁸¹ Emanuele Ottolenghi & Saeed Ghasseminejad, "Iran's Repressive Apparatus Gets a Raise," *The Wall Street Journal*, December 22, 2014. (<http://www.wsj.com/articles/emanuele-ottolenghi-and-saeed-ghasseminejad-irans-repressive-apparatus-gets-a-raise-1419281552>)

⁸² *Ibid.*

⁸³ Abbas Qidaari, "More Planes, More Missiles, More Warships: Iran Increases Its Military Budget By A Third," *Al-Monitor*, July 13, 2015. (<http://www.al-monitor.com/pulse/originals/2015/07/khamenei-orders-increase-military.html>)

de-listed under the JCPOA.⁸⁴ The following is based on their analysis.

Access to Europe and the De-Listing of IRGC Entities

With the lifting of EU sanctions under the JCPOA, Europe will increasingly become an economic free zone for Iran's most dangerous people and entities. In addition to the lifting of specific types of economic and financial sanctions, the **JCPOA requires the United States and Europe to remove numerous IRGC-linked entities from their sanction lists.**

Europe will de-list significant IRGC entities and persons including the Quds Force. Some of these de-listings will occur on Implementation Day, but many more will fall off after eight years (assuming that they are even enforced over the next eight years).

Khatam al-Anbiya (KAA), a massive IRGC conglomerate, was designated by the United States as a proliferator of weapons of mass destruction.⁸⁵ It is Iran's biggest construction firm and, according to my colleagues' estimates, "may be its largest company outright, with 135,000 employees and 5,000 subcontracting firms."⁸⁶ The value of its current contracts is estimated to be nearly \$50 billion, or about 12% of Iran's gross domestic product.⁸⁷ KAA has hundreds of subsidiaries in numerous sectors of Iran's economy including its nuclear and defense programs, energy, construction, and engineering. The company is also involved in "road-building projects, offshore construction, oil and gas pipelines and water systems."⁸⁸ EU sanctions against the company will be lifted after eight years, whether or not the IAEA concludes that Iran's nuclear program is peaceful.

Similarly, the IRGC Cooperative Foundation (a.k.a. *Bonyad Taavon Sepah*), the IRGC investment arm, was designated by the U.S. Treasury as a proliferator of weapons of mass destruction,⁸⁹ but is slated to be de-listed by the EU after eight years as a result of the JCPOA. It

⁸⁴ Emanuele Ottolenghi & Saeed Ghasseminejad, "The Nuclear Deal's Impact on Iran's Revolutionary Guards," *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

⁸⁵ Department of State, Office of the Spokesman, "Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism," October 25, 2007. (<http://2001-2009.state.gov/r/pa/prs/ps/2007/oct/94193.htm>)

⁸⁶ Parisa Hafezi & Louis Charbonneau, "Iranian Nuclear Deal Set to Make Hardline Revolutionary Guards Richer," *Reuters*, July 6, 2015. (<http://www.reuters.com/article/2015/07/06/us-iran-nuclear-economy-insight-idUSKCN0PG1XV20150706>); Emanuele Ottolenghi & Saeed Ghasseminejad, "The Nuclear Deal's Impact on Iran's Revolutionary Guards," *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

⁸⁷ Benoît Faucon & Asa Fitch, "Iran's Guards Cloud Western Firms' Entry After Nuclear Deal," *The Wall Street Journal*, July 21, 2015. (<http://www.wsj.com/articles/irans-guards-cloud-western-firms-entry-after-nuclear-deal-1437510830>)

⁸⁸ *Ibid.*

⁸⁹ Department of the Treasury, Press Release, "Fact Sheet: Treasury Designates Iranian Entities Tied to the IRGC and IRISL," December 21, 2010. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1010.aspx>)

is not listed among the entities that the United States will de-list. The portfolio of IRGC Cooperative Foundation controls more than 20% of the value of the Tehran Stock Exchange.⁹⁰

Ansar Bank and Mehr Bank, which are both IRGC-linked and were designated by the Treasury for providing financial services to the IRGC,⁹¹ will also be de-listed by the EU (but not by the United States). They will be allowed back onto the SWIFT system and may open branches, conduct transactions, and facilitate financial flows for the IRGC.

Other IRGC-linked banks, like Bank Melli,⁹² will be de-listed by both the United States and Europe upon Implementation Day and allowed back onto SWIFT.

The Quds Force, the IRGC's external arm, will also be a beneficiary of sanctions relief. In addition to the EU de-listing, the JCPOA will lift both U.S. and EU sanctions on Iran's commercial airline Iran Air, on which the Quds Force depends to "dispatch weapons and military personnel to conflict zones worldwide. ... The Quds Force will have access to newer, larger, and more efficient planes with which to pursue its strategic objectives."⁹³

The JCPOA also de-lists several IRGC military research and development facilities. For example, EU sanctions on the Research Center for Explosion and Impact will be lifted after eight years. This entity was designated by the EU for connection to the possible military dimensions of Iran's nuclear program.⁹⁴ Whether or not the IAEA has reached a broader conclusion that Iran's program is peaceful and this center is not engaged in weapons-related activities, the sanctions will be lifted.

In eight years, United States will also lift sanctions on central pillars of Iran's nuclear and weaponization activities. Two central individuals, Fereidoun Abbasi-Davani and Mohsen Fakhrizadeh, will be de-listed. Abbasi-Davani is the former head of the Atomic Energy Organization of Iran.⁹⁵ Fakhrizadeh is the AQ Khan of Iran's nuclear weapons development and, according to the U.S. State Department, "managed activities useful in the development of a

⁹⁰ Emanuele Ottolenghi & Saeed Ghasseminejad, "The Nuclear Deal's Impact on Iran's Revolutionary Guards," *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

⁹¹ Department of the Treasury, Press Release, "Fact Sheet: Treasury Designates Iranian Entities Tied to the IRGC and IRISL," December 21, 2010. (<http://www.treasury.gov/press-center/press-releases/Pages/tg1010.aspx>)

⁹² Department of the Treasury, Press Release, "Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism," October 25, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp644.aspx>)

⁹³ Emanuele Ottolenghi & Saeed Ghasseminejad, "The Nuclear Deal's Impact on Iran's Revolutionary Guards," *Foundation for Defense of Democracies*, July 17, 2015. (<http://www.defenddemocracy.org/media-hit/emanuele-ottolenghi-the-nuclear-deals-impact-on-irans-revolutionary-guards/>)

⁹⁴ The Council of the European Union, "Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 Implementing Regulation (EU) No 961/2010 on Restrictive Measures against Iran," *Official Journal of the European Union*, December 2, 2011. (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R1245>)

⁹⁵ Department of State, Press Statement, "Increasing Sanctions Against Iranian Nuclear Proliferation Networks Joint Treasury and State Department Actions Target Iran's Nuclear Enrichment and Proliferation Program," December 13, 2012. (<http://www.state.gov/r/pa/prs/ps/2012/12/202023.htm>)

nuclear explosive device” and designated “for his involvement in Iran’s proscribed WMD activities.”⁹⁶

The United States will also de-list the Organization of Defensive Innovation and Research (SPND), an entity “primarily responsible for research in the field of nuclear weapons development,” according to the U.S. State Department. The organization was designated less than a year ago, during the P5+1 negotiations with Iran, and was created by Fakhrizadeh.⁹⁷ The EU will also de-list SPND and Abbasi-Davani and Fakhrizadeh at the same time.

Additionally, the United States will de-list Aria Nikan Marin Industry, which sources goods for Iran’s nuclear program and whose customers include Khatam al-Anbiya;⁹⁸ Iran Pooya, which supplies material for centrifuge production;⁹⁹ and the Kalaye Electric Company, which was designated as a proliferator in 2007 for its involvement in Iran’s centrifuge research and development efforts.¹⁰⁰ Kalaye Electric was a site of centrifuge production in 2003. When the IAEA requested access and the ability to take environmental samples, Iran delayed granting access and, according to experts, took “extraordinary steps to disguise the past use and purpose of this facility.”¹⁰¹

Jahan Tech Rooyan Pars and Mandegar Baspar Kimiya Company will also be delisted. These two entities were involved in illicit procurement of proliferation-sensitive material.¹⁰²

JCPOA BENEFITS KHAMENEI’S NETWORK OF CORRUPTION

My colleagues Emanuele Ottolenghi and Saeed Ghasseminejad have also studied the sanctions relief scheduled to be provided to Supreme Leader Ali Khamenei under the JCPOA. As they explain, the de-listing of these entities “will pump tens of billions of dollars into the supreme leader’s personal coffers, helping him secure his grip on the Iranian people, and bolstering Iran’s ability to promote its agenda abroad.”¹⁰³ The following is based on their analysis.

⁹⁶ Department of State, Media Note, “Additional Sanctions Imposed by the Department of State Targeting Iranian Proliferators,” August 29, 2014. (<http://www.state.gov/r/pa/prs/ps/2014/231159.htm>)

⁹⁷ Ibid.

⁹⁸ Department of State, Press Statement, “Increasing Sanctions Against Iranian Nuclear Proliferation Networks Joint Treasury and State Department Actions Target Iran’s Nuclear Enrichment and Proliferation Program,” December 13, 2012. (<http://www.state.gov/r/pa/prs/ps/2012/12/202023.htm>)

⁹⁹ Ibid.

¹⁰⁰ Department of the Treasury, Press Release, “Treasury Targets Iranian Companies for Supporting WMD Proliferation,” February 16, 2007. (<http://www.treasury.gov/press-center/press-releases/Pages/hp267.aspx>)

¹⁰¹ “ISIS Imagery Brief: Kalaye Electric,” *Institute for Science and International Security*, March 31, 2005. (<http://isis-online.org/publications/iran/kalayeelectric.html>)

¹⁰² Department of State, Media Note, “Additional Sanctions Imposed by the Department of State Targeting Iranian Proliferators,” August 29, 2014. (<http://www.state.gov/r/pa/prs/ps/2014/231159.htm>)

¹⁰³ Emanuele Ottolenghi & Saeed Ghasseminejad, “Under Iran Agreement, U.S. Will Delist All Entities Controlled by Supreme Leader,” *Foundation for Defense of Democracies*, July 27, 2015. (<http://www.defenddemocracy.org/media-hit/ottolenghi-ghasseminejad-us-will-delist-entities-controlled-by-khamenei/>)

Khamenei controls a network of foundations reportedly worth \$95 billion.¹⁰⁴ At the top, sits the Execution of Imam Khomeini's Order (EIKO) or Setad. The U.S. Treasury Department designated this organization and its subsidiaries in June 2013 and noted at the time that the purpose of EIKO was "to generate and control massive, off-the-books investments, shielded from the view of the Iranian people and international regulators."¹⁰⁵

Then-Under Secretary for Terrorism and Financial Intelligence David S. Cohen further explained:

"Even as economic conditions in Iran deteriorate, senior Iranian leaders profit from a shadowy network of off-the-books front companies. While the Iranian government's leadership works to hide billions of dollars in corporate profits earned at the expense of the Iranian people, Treasury will continue exposing and acting against the regime's attempts to evade our sanctions and escape international isolation."¹⁰⁶

An overview of the EIKO's holdings reveals the extent of its control of the Iranian economy. The value of EIKO's real estate portfolio totals nearly \$52 billion; its stakes in publicly traded companies total nearly \$3.4 billion (in 2013);¹⁰⁷ and Khamenei controls more than five percent of publicly traded companies on Tehran's Stock Exchange.¹⁰⁸

EIKO's investment arm, Rey Investment Company is worth \$40 billion, according to the U.S. Treasury.¹⁰⁹ Tadbir Group, EIKO's investment arm on the Tehran Stock Exchange, controls (among other entities) Parsian Bank and Karafarin Bank—valued at \$900 and \$830 million respectively.¹¹⁰ EIKO also controlled a factory in Germany that may have provided Iran with critical dual-use technology for its nuclear program.¹¹¹

The United States is scheduled to de-list Khamenei's financial empire on Implementation Day (in about 6-12 months) despite the fact that none of these entities were designated for nuclear proliferation. Instead, EIKO and the companies it controls were designated under Executive Order 13599 which blocks the property of the Government of Iran (GOI) or any subdivision, instrumentality or agency of the Government of Iran as well as any as well as any person owned or controlled by, or acting for or on behalf of, the GOI. Executive Order 13599 builds on the

¹⁰⁴ Steve Stecklow, Babak Dehghanpisheh & Yeganeh Torbati, "Khamenei Controls Massive Financial Empire Built on Property Seizures," *Reuters*, November 11, 2013. (<http://www.reuters.com/investigates/iran/#article/part1>)

¹⁰⁵ Department of the Treasury, Press Release, "Treasury Targets Assets of Iranian Leadership," June 4, 2013. (<http://www.treasury.gov/press-center/press-releases/Pages/11968.aspx>)

¹⁰⁶ Ibid.

¹⁰⁷ Steve Stecklow, Babak Dehghanpisheh & Yeganeh Torbati, "Khamenei Controls Massive Financial Empire Built on Property Seizures," *Reuters*, November 11, 2013. (<http://www.reuters.com/investigates/iran/#article/part1>)

¹⁰⁸ Emanuele Ottolenghi & Saeed Ghasseminejad, "Who Really Controls Iran's Economy," *The National Interest*, May 20, 2015. (<http://nationalinterest.org/feature/who-really-controls-irans-economy-12925>)

¹⁰⁹ Ibid.

¹¹⁰ Emanuele Ottolenghi & Saeed Ghasseminejad, "The Bank of Ayatollah," *National Post* (Canada), December 18, 2013. (<http://news.nationalpost.com/full-comment/ottolenghi-ghasseminejad-the-bank-of-ayatollah>) The net worth of Parsian Bank and Karafarin Bank is calculated from the Tehran Stock Exchange.

¹¹¹ Michael Birnbaum & Joby Warrick, "A Mysterious Iranian-Run Factory in Germany," *The Washington Post*, April 15, 2013. (https://www.washingtonpost.com/world/europe/a-mysterious-iranian-run-factory-in-germany/2013/04/15/92259d7a-a29f-11e2-82bc-511538ae90a4_story.html)

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Section 311 of the USA Patriot Act finding that Iran is a jurisdiction of primary money laundering concern.¹¹²

These entities were involved in illicit financial practices including government corruption, and there is no indication that this conduct has changed. They continue to pose risks to the integrity of the global financial system and to engage in illicit and corrupt business practices. Yet, it appears that they will be granted a clean bill of health as a result of the JCPOA.

List of Companies Controlled by EIKO Scheduled to be De-listed by the United States

- Behsaz Kashane Tehran Construction Co.
- Commercial Pars Oil Co.
- Cylinder System L.T.D.
- Dey Bank
- Execution of Imam Khomeini's Order (EIKO)
- Ghadir Investment Company
- Ghaed Bassir Petrochemical Products Company
- Golden Resources Trading Company L.L.C.
- Hormoz Oil Refining Company
- Iran & Shargh Company
- Karafarin Bank
- Mahab Ghodss Consulting Engineering Company
- Marjan Petrochemical Company
- MCS Engineering
- MCS International GmbH
- Modaber
- Omid Rey Civil & Construction Company
- One Class Properties (Pty) Ltd.
- One Vision Investments 5 (Pty) Ltd.
- Pardis Investment Company
- Pars Oil and Gas Company
- Pars Oil Co.
- Parsian Bank
- Persia Oil & Gas Industry Development Co.
- Polynar Company
- Rey Investment Company
- Rey Niru Engineering Company
- Reyco GmbH.
- Rishmak Productive & Exports Company

¹¹² "Executive Order 13599," *Federal Register*, February 8, 2012. (<http://www.gpo.gov/fdsys/pkg/FR-2012-02-08/pdf/2012-3097.pdf>); U.S. Department of the Treasury, Press Release, "Treasury Targets Assets of Iranian Leadership," June 4, 2013. (<http://www.treasury.gov/press-center/press-releases/Pages/j11968.aspx>); "New US Sanctions on the Government of Iran and Iranian Financial Institutions," *Stephoe & Johnson, LLP*, February 7, 2012. (<http://www.stephoe.com/publications-newsletter-431.html>)

- Royal Arya Co.
- Sadaf Petrochemical Assaluyeh Company
- Sina Bank
- Sina Shipping Company Limited
- Tadbir Brokerage Company
- Tadbir Construction Development Company
- Tadbir Economic Development Group
- Tadbir Energy Development Group Co.
- Tadbir Investment Company
- Tosee Eqtesad Ayandehsazan Company
- Zarin Rafsanjan Cement Company

PART 3: ALTERNATIVES TO THE CURRENT JCPOA

Discussions of disapproving this current JCPOA quickly turn to questions of the alternative to this agreement. Those who support this JCPOA present a false choice between this agreement and war, and portray those who question this agreement as having no proposed alternative. As the liberal public intellectual Leon Wieseltier eloquently explains:

“But what is the alternative? This is the question that is supposed to silence all objections. It is, for a start, a demagogic question. This agreement was designed to prevent Iran from acquiring nuclear weapons. If it does not prevent Iran from acquiring nuclear weapons—and it seems uncontroversial to suggest that it does not guarantee such an outcome—then it does not solve the problem that it was designed to solve. And if it does not solve the problem that it was designed to solve, then it is itself not an alternative, is it? The status is still quo. Or should we prefer the sweetness of illusion to the nastiness of reality? For as long as Iran does not agree to retire its infrastructure so that the manufacture of a nuclear weapon becomes not improbable but impossible, the United States will not have transformed the reality that worries it. We will only have mitigated it and prettified it. We will have found relief from the crisis, but not a resolution of it.”¹¹³

There is an alternative to this current JCPOA. It is an amended JCPOA. Congress should require the administration renegotiate certain terms of the proposed JCPOA and resubmit the amended agreement for congressional approval. The amended JCPOA should much more effectively “cut off every single one of Iran’s pathways”¹¹⁴ to a nuclear bomb and retains tools of effective and peaceful sanctions enforcement against Iranian illicit behavior on multiple fronts. President Obama and his Cabinet have repeatedly said, “No deal is better than a bad deal.”¹¹⁵ In making

¹¹³ Leon Wieseltier, “The Iran Deal and the Rut of History,” *The Atlantic*, July 27, 2015. (<http://www.theatlantic.com/international/archive/2015/07/iran-deal-history/399644/>)

¹¹⁴ Barack Obama, “Press Conference by the President,” *The White House, Washington, D.C.*, July 15, 2015. (<https://www.whitehouse.gov/the-press-office/2015/07/15/press-conference-president>)

¹¹⁵ For example, Barack Obama, “Remarks by the President in a Conversation with the Saban Forum,” *Willard Hotel, Washington, D.C.*, December 7, 2013. (<https://www.whitehouse.gov/the-press-office/2013/12/07/remarks-president-conversation-saban-forum>); John Kerry, “Interview With Martha Raddatz of ABC This Week,” *Washington, D.C.*, March 1, 2015. (<http://www.state.gov/secretary/remarks/2015/03/238051.htm>); Susan Rice,

this commitment, the President had an acceptable alternative path in mind or he would not have threatened to walk away from the table.¹¹⁶ It is reasonable to assume that no president would enter negotiations, especially over something as fundamental to American national security as preventing Iran from developing nuclear weapons, unless that president had a well-developed best alternative to a negotiated agreement.

As I discuss below, it is not unprecedented for Congress and a U.S. administration to work together to renegotiate the terms of a treaty or non-binding agreement. Congress can use this precedent to encourage the strengthening of the deal on its technical and conceptual merits. Congress should insist on an alternative to this deeply flawed deal and keep the president to his commitment that such alternatives always did—and continue to—exist. An agreement that gives Iran patient pathways to a nuclear weapon, access to heavy weaponry and ICBM technology, while enriching the leading state sponsor of terrorism, and its most hardline elements the IRGC and Iran's Supreme Leader with hundreds of billions of dollars in sanctions relief, should be unacceptable. An agreement that undermines the use of peaceful economic leverage should be unacceptable. An agreement that leaves military force as the only effective option for a future president to stop Iran's nuclear weapons development should be unacceptable.

The current JCPOA legitimizes Iran's nuclear program, provides significant sanctions relief prior to a demonstrable change in the conduct that prompted the sanctions, and risks spurring nuclear proliferation in the Middle East. No deal is better than this current JCPOA, and a better alternative is achievable.

CONGRESSIONAL PRECEDENTS

Throughout American history, Congress has rejected or required amendments to more than 200 treaties and international agreements (of which about 80 were multilateral).¹¹⁷ This includes major bilateral and multilateral arms control and nuclear agreements during and after the Cold War. My colleague at the Foundation for Defense of Democracies Orde Kittrie, professor of law at Arizona State University and former lead attorney for nuclear affairs at the State Department, has studied the issue of Congressional review of international agreements. The following is based on his research as well as the analysis of other experts.

During the Cold War, Congress played an active role in the negotiation and renegotiation of critical arms control agreements. Democratic Senator Henry "Scoop" Jackson took a leadership role in this respect in opposition to the Nixon administration. Following the Strategic Arms Limitation Talks (SALT I), Jackson authored an amendment to the resolution of approval that required future strategic arms control negotiations to set American strategic arms at parity with

"Remarks As Prepared for Delivery at AIPAC Annual Meeting," *Washington, D.C.*, March 2, 2015. (<https://www.whitehouse.gov/the-press-office/2015/03/02/remarks-prepared-delivery-aipac-annual-meeting-national-security-advisor>)

¹¹⁶ For example, June 30, 2015, President Obama said that he would "will walk away from the negotiations if, in fact, it's a bad deal." Barack Obama, "Remarks by President Obama and President Rousseff of Brazil in Joint Press Conference," *The White House, Washington D.C.*, June 30, 2015. (<https://www.whitehouse.gov/the-press-office/2015/06/30/remarks-president-obama-and-president-rousseff-brazil-joint-press>)

¹¹⁷ For an analysis of the period prior to 1900, see R. Earl McClendon, "The Two-Thirds Rule in Senate Action Upon Treaties, 1789-1901," *The American Journal of International Law*, Vol. 26, No. 1 (Jan., 1932), pages 37-56.

those of the Soviet Union. The Jackson amendment provided criteria for future agreements and “emphasize the disquiet of many members of Congress ... concerning the terms” of the agreement.¹¹⁸ It expressed a Sense of Congress that, “urges and requests the President to seek a future treaty that, inter alia, would not limit the United States to levels of intercontinental strategic forces inferior to the limits provided for the Soviet Union.”¹¹⁹ On September 11, 1972, the Senate passed the Jackson amendment by a vote of 56 to 35. This amendment laid the predicate for Senator Jackson’s later critique that the Carter Administration did not meet this standard in the SALT II Treaty.¹²⁰

The Threshold Test Ban Treaty (TTBT) of 1974 was also initially blocked by the Senate because of concerns over Soviet compliance. TTBT was not submitted to the Senate for approval for two years after signing and was not ratified until after the United States and Soviet Union reached agreement 14 years later on additional provisions to enhance America’s ability to verify Soviet compliance.¹²¹

Republicans and Democrats in the Senate also expressed disapproval of SALT II in a letter to President Carter in 1979. After the Soviet invasion of Afghanistan, Carter withdrew the treaty from Senate consideration.¹²² President Reagan withdrew from voluntary adherence when the treaty expired in 1985, and then began negotiating the Strategic Arms Reduction Treaty (START) and working on the Strategic Defense Initiative (SDI).¹²³

During the Presidency of Bill Clinton, Congress and the administration engaged in a four-year long discussion over the ratification of the Chemical Weapons Test Ban Treaty. It was only approved by Congress after the inclusion of 28 conditions in the resolution of ratification.¹²⁴ This treaty included 87 participating countries. The 1997 resolution of ratification of the Conventional Forces in Europe also contained 14 conditions. Congressional input derailed neither treaty.

At the end of the George W. Bush Administration, the United States and United Arab Emirates negotiated a civil nuclear cooperation agreement (called a 123 agreement). However, then-Chairman of the House Foreign Affairs Committee Howard Berman (D-CA) objected that the agreement did not ensure that the UAE would not engage in enrichment and reprocessing.¹²⁵ In response to Congressional pressure, the treaty was not submitted for approval, but instead, the incoming Obama Administration re-opened the negotiations. The amended agreement then included a binding commitment from the UAE not to engage in domestic enrichment or

¹¹⁸ Michael Krepon, “The Jackson Amendment,” *Arms Control Wonk*, August 6, 2009. (<http://krepon.armscontrolwonk.com/archive/2414/the-jackson-amendment>); “Congress Approves SALT Offensive Arms Agreement,” *Congressional Quarterly*, 1973.

¹¹⁹ (<http://library.cqpress.com/cqalmanac/document.php?id=cqal72-1251467>)

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² “The Treaty on the Limitation of Underground Nuclear Weapon Tests (TTBT),” United States of America – Union of Soviet Socialist Republics, July 3, 1974. (<http://www.state.gov/t/isn/5204.htm>)

¹²³ “Milestones: 1969–1976: Strategic Arms Limitations Talks/Treaty (SALT) I and II,” *U.S. Department of State Website*, accessed July 27, 2015. (<https://history.state.gov/milestones/1969-1976/salt>)

¹²⁴ Ibid.

¹²⁵ Jonathan B. Tucker, “U.S. Ratification of the Chemical Weapons Convention,” *National Defense University Press*, December 2011. (http://ndupress.ndu.edu/Portals/68/Documents/casestudies/CSWMD_CaseStudy-4.pdf)

¹²⁶ Interview with former State Department arms control expert, July 23, 2015.

reprocessing. In short, Congress expressed concerns about specific components of an agreement; the administration listened to Congress and renegotiated a stronger agreement.

In these examples, Congress played a significant role in rejecting or modifying important national security treaties or agreements. In some cases, like SALT I, TTBT, and SALT II, these were arms control agreements negotiated with the Soviet Union, a much more formidable adversary than Iran, in possession of thousands of nuclear tipped missiles where the risk and consequences of war were much greater. In the case of the Chemical Weapons Ban Treaty, this was a complicated multilateral negotiation involving 87 countries as compared to the six countries involved in the Iran negotiations. In the example of the 123 agreement, this was a complicated agreement that set a “gold standard” for civil nuclear cooperation that barred enrichment or reprocessing that is being overturned by the JCPOA. In several of the above examples, these were treaties that were legally binding as opposed to the non-binding political agreement that is the JCPOA.

LIKELY SCENARIOS IF CONGRESS REJECTS THIS CURRENT JCPOA

If Congress passes a Joint Resolution of Disapproval of the JCPOA and overrides a presidential veto, there are three likely scenarios that will result. None is good, but each is preferable to the current JCPOA, which provides Iran with multiple pathways to a nuclear bomb and provides the international community with no peaceful means to enforce the agreement.

Scenario 1: Iranian Faithful Compliance

In this scenario, despite the rejection of the JCPOA by Congress, Iran could decide to implement its commitments in good faith. The implementation of Iran’s nuclear commitments would then trigger U.N. and EU sanctions relief under the terms of the JCPOA.

In this case, the president would have two options:

A) Rebuff Congress and wield executive authority to the extent possible to neutralize the Corker-Cardin statutory sanctions block and proceed with the deal. In this case, the president could provide a substantial amount of the sanctions relief committed under the JCPOA by de-designating Iranian entities on Treasury’s Specially Designated Nationals list,¹²⁶ working with the Europeans to permit most Iranian financial institutions back onto the SWIFT financial messaging system, and de-designating the Central Bank of Iran and permitting Iranian oil exports to increase. He would do this by following his signing statement where he declared section 1245 of the National Defense Authorization Act of 2012 (which imposed the legislative designation of the CBI and the legislative scheme to grant exceptions only to countries buying Iranian oil which “significantly reduced” these purchases) to be “non-binding” if it “conflicts with [his] constitutional authorities” to “conduct foreign relations”;¹²⁷ or,

¹²⁶ “Specially Designated National List,” *U.S. Department of the Treasury Website*, July 23, 2015. (<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>)

¹²⁷ The White House, Press Release, “Statement by the President on H.R. 1540,” December 31, 2011. (<https://www.whitehouse.gov/the-press-office/2011/12/31/statement-president-hr-1540>)

B) Accept the results of the Joint Resolution of Disapproval passed by Congress and undertake efforts to persuade our partners to join the U.S. in demanding that key parts of the agreement be renegotiated on better terms.

Scenario 1B would be the preferable outcome as it would maintain U.S. economic leverage and also lead to a renegotiation of the most troubling elements of the agreement (some of these are outlined below as examples). Even Scenario 1A would be preferable to the current JCPOA because although the United States would be providing certain sanctions relief, congressional disapproval would temper the markets. Western companies and banks, which are hesitant about re-entering the Iranian market because of market and counter-party risks—would be even less likely to enter into new business transactions. International banks are likely to take a wait-and-see approach before doing business with Iran—especially given the market-based risks, continued financial sanctions that target the IRGC and terrorism activities, and their uncertainties of what a new American administration would do with respect to the JCPOA and sanctions enforcement.

Foreign companies and financial institutions are likely to be cautious even if a vote of disapproval fails. They will be even more cautious if it succeeds. The U.S. financial sanctions regime will still retain its powerful deterrent effect even if Congress requires the administration to renegotiate the JCPOA. However, over time, under the JCPOA, market risks will diminish, banks will grow more confident about the counter-party risks, and political pressure will be applied to finance the investment and trade that their home-country energy and industrial companies are seeking. The U.S. will never have greater economic leverage than it has now to renegotiate a better deal.

Scenario 2: Iranian Walk Away

If Congress disapproves of the JCPOA, Iran could decide to abandon its commitments and walk away from the JCPOA. The new U.N. Security Council resolution would not be implemented and the existing U.N. sanctions and arms embargo and ballistic missile restrictions would remain. If past is prologue, Iran will escalate its nuclear program incrementally not massively to avoid crippling economic sanctions or U.S. military strikes. Iranian nuclear escalation historically has involved incremental increases with the goal of avoiding a U.S. massive response.

For example, based on the IAEA reports from December 2008, February 2013 and November 2013, during the approximately five-year period of the most intense sanctions escalation during President Obama's term, Iran's nuclear program expanded as follows:

- Increase from 3,936 IR-1 operational centrifuges (5,412 total installed) in the December 2008 IAEA report to 9,146 IR-1 operational centrifuges (15,748 total installed) in the November 2013 IAEA report at the Natanz enrichment facility;
 - *Increase of 1,042 IR-1 operational centrifuges per year*
 - *Increase of 2,067 IR-1 installed centrifuges per year*

- Increase from zero IR-1s at Fordow in December 2008 to 696 IR-1 operational centrifuges (2,710 total installed) in November 2013;
 - *Increase of 139 IR-1 operational centrifuges per year*
 - *Increase of 542 IR-1 installed centrifuges per year*
- Increase from 180 IR-2m's centrifuges partially or fully installed in February 2013 at Natanz to 1,008 IR-2m's fully or partially installed in November 2013.
 - *Increase of 828 IR-2m partially or fully installed centrifuges in 9 months*
- Increase from 630 kg of Iran's low-enriched 3.5% stockpiles in November 2008 to 10,357 kg in November 2013.
 - *Increase of 1,945 kg of 3.5% LEU per year*
- Increase from zero kg of Iran's low-enriched 19.75% stockpiles in November 2008 to 410 kg in November 2013.
 - *Increase of 82 kg of 19.75% LEU per year*

While this increase was concerning, Tehran was careful not to engage in massive nuclear escalation that could trigger more crippling economic sanctions or military strikes. Despite President Hassan Rouhani's statement that if the West does not provide Iran with the nuclear deal it wants, Iran "will go back to the old path, stronger than what they [the West] can imagine,"¹²⁸ Iran has moved cautiously.

Iran is unlikely to rapidly move to rapid nuclear breakout because this would risk war (which despite the U.S. aversion to war, Iran understands it would ultimately lose). Rapid breakout would also likely unify Europe and the United States (and perhaps even Russia and China)—the opposite of what Iran seeks to achieve. All the P5+1 countries, including Russia and China, have been committed to stopping an Iranian nuclear weapon because of their own self-interest. This was even true of Russia, which faced U.S. and EU sanctions during the Iran negotiations over their invasion of Crimea and eastern Ukraine.

In this scenario, the president would use the power of secondary sanctions to persuade the Europeans to join a U.S.-led effort to isolate Iran again. EU sanctions would likely hold or, at a minimum, European companies and banks would be reluctant to re-enter Iran. China, India, Japan, South Korea and Turkey would be unlikely to release the \$100 billion in oil escrow funds for fear of U.S. sanctions. Furthermore, these sanctions require Iran to spend the funds on goods from those countries so it is advantageous to those countries to keep the funds in escrow. It is a boon to their exports. Why would they release the funds so that Iran can spend the money elsewhere?

¹²⁸ "Iran's Rouhani Says the West Should Remain Committed to a Final Nuclear Deal: IRNA," *Reuters*, June 30, 2015. (<http://www.reuters.com/article/2015/06/30/us-iran-nuclear-rouhani-idUSKCN0PA2DI20150630>)

If Iran were to massively escalate, for example to 15,000 operational IR-1 centrifuges or deploy its existing 1,000 IR-2m centrifuges plus thousands more in a break-out scenario, the U.S. would be forced to respond with crippling sanctions or military force.

In addition to the re-imposition of sanctions suspended under the JPOA, these crippling sanctions could include the following new sanctions measures:

- Designating all remaining Iranian financial institutions and instructing SWIFT to expel all remaining financial institutions from the SWIFT messaging system;
- Sanctioning any U.S. or foreign financial institution that provides Iran access to, or use of, any of its funds except for humanitarian-related transactions;
- Dramatically reducing permissible imports of Iranian crude products;
- Banning countries buying Iranian crude from using oil escrow funds to export all non-humanitarian commercial goods to Iran;
- Blacklisting additional sectors of the Iranian economy owned or controlled by the government of Iran and/or the IRGC, including the mining, engineering and construction sectors;
- Re-imposing and vigorously enforcing gold sanctions to deny Iran access to gold to replenish its FX reserves;
- Imposing tighter sanctions on non-oil Iranian commercial exports;
- Expanding the definition of crude oil sanctions to include all oil products; and,
- Imposing additional sanctions against the holdings of Iran's bonyads and investment funds, and entities owned and or controlled by the IRGC, the Quds Force, the Supreme Leader and other entities.

The credibility of the U.S. threat to use crippling sanctions or military force is critical to deterring Iran from crossing U.S. redlines, which need to be clearly set by this or the next president.

Scenario 3: Divide the P5+1

In the third scenario, Iran could implement certain nuclear commitments but choose not to implement others, thus creating diplomatic ambiguity. Iran could then try to use diplomatic leverage to divide the Russians and Chinese from the West, and the Europeans from the United States. Iran's compliance with certain commitments might still trigger U.N. and EU sanctions relief, but Iran could exploit the P5+1 discord to demonstrate obstinacy on their JCPOA commitments, including on inspections, resolution of PMD issues, and the pace of nuclear compliance, among others.

This would be a messy scenario because of the divisions between the P5+1 partners, but ultimately, if all of the members were united around the goal of preventing an Iranian nuclear weapons, the situation may not reach a point of critical escalation – either in tensions between the U.S. and its partners and Iranian nuclear escalation. The president could threaten the use of new sanctions to keep countries and companies from normalizing with Iran and work to persuade the Europeans to join the United States in demanding that key parts of the agreement be renegotiated on better terms.

If we take the Secretary of State at his word, and he feels he would have no credibility in negotiating a new agreement, the Obama Administration can leave the issue of negotiations to the next administration. We would survive the period of time until a new administration (Democratic or Republican) takes office because Iran would not want to trigger major U.S. retaliation by engaging in massive nuclear escalation (see above).

CONTINUE ECONOMIC AND DIPLOMATIC PRESSURE ON IRAN

None of the above scenarios is ideal but they are not likely to be disasters, either. And they are better than this deal. These options ultimately depend on the power of American coercive diplomacy, economic sanctions, and the credibility of the American military option.

Secondary sanctions rely on the private sector making business decisions to minimize risk and maximize profits. All U.S. secondary sanctions present companies with a straightforward choice: You can do business with the United States or you can do business with rogue actors. In the case of Iran sanctions, when companies are presented with the choice between America's \$17 trillion economy and Iran's approximately \$400 billion economy, the overwhelming majority of companies will choose the United States.

The alternative to the current JCPOA depends on American coercive diplomacy: 1) leveraging the power of U.S. secondary sanctions to persuade international financial institutions and companies to stay out of Iran; 2) the use of military power, either directly or through the support of allies, against Iranian regime interests in Syria, Iraq, Yemen; and 3) the credible threat of conventional and cyber-enabled strikes against Iran's nuclear program, which is likely to increase after January 2017.

If the president believes that the United States has an effective economic snapback a decade or more in the future after companies have invested billions of dollars in the Iranian economy, then U.S. sanctions remain strong today. The international sanctions architecture is not yet crumbling, and Iran's economy is still fragile.

If the president believes, however, that the multilateral sanctions regime cannot withstand the fallout of the above scenarios, how will the United States have economic leverage in the future? If multilateral sanctions will not hold in the face of a renewed commitment to negotiate an improved agreement, then United States does not have sufficient peaceful economic leverage to enforce this agreement in the future when Iran's nuclear program will be much bigger, Iran can leverage its "nuclear snapback" against the re-imposition of sanctions, Iran's economy will be much stronger, and America's P5+1 partners will have made significant investments that they will be loathe to lose.

Furthermore, if the P5+1 unity and the international sanctions architecture would have held when the United States was prepared to walk away from the table during the negotiations, it can hold now. It is better to test the strength of international sanctions and U.S. secondary sanctions now rather than in a future breakout or sneakout scenario when Iran's nuclear program and economy are greatly expanded.

Even if the international community lifts all other sanctions, the world would merely revert to a pre-2010 dynamic in which the Washington imposed unilateral sanctions and presented foreign companies with a choice of doing business in the United States or Iran. Washington would have difficult conversations with its allies about sanctions enforcement, but given the power of U.S. markets and the dominance of the U.S. dollar, foreign companies are likely to keep Iran at arm's length.

AMENDMENTS TO IMPROVE THE JCPOA

The JCPOA can be improved by returning to the principles that Congress has laid out and that are contained in six U.N. Security Council Resolutions. These include:

- 1) Sufficient dismantlement to ensure Iran cannot build a nuclear weapon;
- 2) Gradual sanctions relief and an agreement of sufficient duration tied to Iranian performance;
- 3) Serious inspection regime that combines short-notice, surprise inspections with extensive monitoring of declared sites; and,
- 4) Maintenance of sufficient economic leverage to peacefully enforce the agreement against Iranian non-compliance.

This current JCPOA can be improved in key areas. The following section provides a few examples of the specific changes that should be made. This is not an exhaustive list but is provided as an illustration of how Congress could require reasonable modifications to the agreement. The president should be able to build consensus with U.S. allies that these (and other) amendments strengthen the deal and that congressional support is critical for a durable agreement.

1. Include a sunset clause that must be voted on every 10 years.

If it is currently unacceptable for Iran to obtain a nuclear weapons capacity, what is the reason for an arbitrary 10 and 15 year sunset of the limitations on Iran's nuclear activities? Instead, the agreement could be structure in such a way that the limitations only sunset upon an affirmative vote of the United Nations Security Council.

2. Permanently require excess uranium to be shipped out of Iran.

In the current JCPOA, Iran is required to ship out spent fuel from the Arak reactor for the lifetime of this facility. A similar requirement should be included that requires that excess enriched uranium above 300 kg be shipped out from Iran. During the Joint Plan of Action (JPOA) interim agreement, Iran failed to abide by its commitment to convert all excess uranium into uranium dioxide.¹²⁹ Rather than leave open the possibility that Iran may be unable to fulfill

¹²⁹ David Albright, Serena Kelleher-Vergantini, & Andrea Stricker, "Iran's Newly Produced Low Enriched Uranium Hexafluoride: Definitely not Converted into Uranium Dioxide," *Institute for Science and International Security*, July

its commitments regarding conversion of excess uranium, it could simply be required to be exported. In addition, there should be a permanent ban on Iran's ability to produce highly enriched uranium (HEU) and a permanent ban on reprocessing and reprocessing R&D.

3. Limit Iran's enrichment to IR-1 centrifuges and prohibit advanced centrifuge R&D.

Iran has no need for advanced centrifuges to meet its practical needs for civilian energy. These advanced models, once operational, reduce Iranian breakout time, and given a much easier clandestine sneak option. The JCPOA permits this capability beginning in year 8, accelerates in after year 10, and permits unlimited and industrial-scale deployment after year 15. Breakout time drops after year 10 from one-year, the Obama Administration's benchmark for an adequate time to mount a diplomatic, economic and military response, to perhaps "almost down to zero" by year 13, according to President Obama.¹³⁰ Respected nuclear physicist David Albright explains that the installation and operation of advanced centrifuges in year 13 "would allow Iran to lower its break-out times down to days or a few weeks."¹³¹

Once restrictions disappear at year 15 on full-scale deployment of advanced centrifuges, enrichment about 3.67% and the accumulation of stockpiles of LEU about 300 kg, Iran will be at near-zero breakout. With high-powered centrifuges capable of reaching enrichment targets at much greater efficiency, Iran also will need far fewer machines; this makes it easier for Iran to hide these centrifuges in a heavily fortified Fordow enrichment facility (which it will be able to use for enrichment or to build multiple Fordow-type facilities after year 15) – and enable an easier clandestine sneakout option to a nuclear weapon.

An amended agreement would ban the use of, and R&D into, these advanced centrifuges.

4. Require an invasive inspections regime that allows go anywhere, anytime access to places, personnel, and paperwork. The inspections regime should be modeled on the South Africa experience.

Former IAEA Deputy Director-General for Safeguards Olli Heinonen was recently asked by a member of Congress to rate the JCPOA verification and inspection regime on a scale of one to 10. He responded:

"Thank you, Mr. Congressman. And I perhaps use this opportunity also to clarify my rating, which Ranking Member Lynch asked earlier today. He asked me to rate the deal with a scale from one to 10. And as you see from my testimony, I actually have divided this testimony in three parts."

1, 2015. (http://isis-online.org/uploads/isis-reports/documents/ISIS_Comments_on_JPA_Report_July_1_2015_Final.pdf)

¹³⁰ "Transcript: President Obama's Full NPR Interview on Iran Nuclear Deal," *NPR*, April 7, 2015.

(<http://www.npr.org/2015/04/07/397933577/transcript-president-obamas-full-npr-interview-on-iran-nuclear-deal>)

¹³¹ Eli Lake, "Where the U.S. Caved to Get Iran to Sign," *Bloomberg*, July 17, 2015.

(<http://www.bloombergview.com/articles/2015-07-17/where-the-u-s-caved-to-get-iran-to-sign>)

"One part is the declared facilities with declared materials; one is the rights and provisions to access undeclared activities, where I raised those concerns; and then there is a third category, which I mentioned in my written statement, which are some other activities which are proscribed, like activities related to acquisition of computers software to design nuclear explosive devices, to certain multipoint detonation systems.

"When I look the rating for each of those I think it's better to look each of those and you'll make your own risk assessment on that. The first one, when I said a rating seven to eight, this is for declared facilities, the way I see. And why it is not higher is because there is this dispute settlement process, which you miss after 24 days or even more. But then if you ask me to give the rating for this access to suspected sites, undeclared sites, I don't think that I would give more than five, if we use this rating. And then if you ask my opinion with other possibilities to find these computer codes and someone using them, and there is actually even not really an inspection procedure for that, I think it's a zero. It's not even one. So I think that this clarifies and answers to your concerns." (emphasis added)¹³²

Elsewhere, Dr. Heinonen has written:

*"The IAEA verification regime must go further than the Additional Protocol (AP). Contrary to what is commonly understood, the AP does not provide the IAEA with unfettered access. Currently, the IAEA does not have access to Iran's sensitive nuclear information. For years, inspectors have been stonewalled. A verifiable agreement would require unfettered access to all key facilities, personnel, documentation, and other information being sought. The AP, by itself, does not fully oblige this."*¹³³

Dr. Heinonen argues that this "AP-plus" verification and inspection regime must be permanent:

*"AP-plus verification activities cannot end upon the expiration of an arbitrary period of time, but rather only when the IAEA has concluded that all nuclear material and activities in Iran are in peaceful use, that there are no undeclared activities, and the U.N. Security Council is able to conclude that Iran has fully restored international confidence in the peaceful nature of its nuclear program."*¹³⁴

¹³² For more details, see Olli Heinonen, "Testimony on The Iran Nuclear Deal and its Impact on Terrorism Financing," *Testimony before the Committee on Financial Services Task Force to Investigate Terrorism Financing*, July 22, 2015. (<http://financialservices.house.gov/uploadedfiles/hhrg-114-ba00-wstate-oheinonen-20150722.pdf>)

¹³³ Olli Heinonen, "Verifying Iran for the Long Term," *Iran Task Force Memo*, March 2015. (http://taskforceoniran.org/pdf/Verifying_Iran.pdf)

¹³⁴ Ibid.

There is precedent for the IAEA to carry out additional verification measures alongside the Additional Protocol. Dr. Heinonen writes:

“South African authorities adopted, in the early 1990’s, an open, completely transparent policy of IAEA inspections ‘any time—any place, with a reason.’ Although South Africa ratified the AP in 2002, the IAEA continued to conduct such additional transparency measures parallel to its implementation of the AP until South Africa was given a clean bill of health in 2010. The rationale for the approach and extended monitoring was that enrichment and weapons-related know-how remained after the dismantlement of the actual infrastructure.”¹³⁵

5. Require up-front ratification of the Additional Protocol.

Under the JCPOA, Iran is not required to ratify the Additional Protocol until eight years into the agreement. Iran is only required to provisionally and voluntarily implement it. Iran signed the Additional Protocol in 2003 and provisionally implemented it while negotiating with the EU3.¹³⁶ But after the IAEA referred Iran to the U.N. Security Council for non-compliance with the NPT Safeguards Agreement, Iran suspended its voluntary implementation.¹³⁷ Iran has in the past used these “voluntary” measures to avoid complete and consistent implementation. Since the Additional Protocol plays a role in the verification regime, Iran should be required as part of the final deal to ratify the Additional Protocol up front. As discussed, verification and inspection requirements must go beyond the AP and must be permanent.

6. Proper resolution of the PMD Issue.

The “Road-Map for the Clarification of Past and Present Outstanding Issues Regarding Iran’s Nuclear Program,” is of great concern both because of the expedited time frame and the fear that this process will not address sufficiently the many outstanding questions that the IAEA and the U.S. intelligence community has about the possible military dimensions of Iran’s nuclear weapons program. For Congress to judge that the PMD issue has been resolved sufficiently, according to William Tobey, the former deputy administrator for defense nuclear nonproliferation at the National Nuclear Security Administration, the IAEA must confirm that:

- It has a complete and correct understanding of the full extent of Iran’s nuclear activities, including any military dimensions;
- It has found no indication that Iran is engaged in any military dimensions;
- It has found no indication of the diversion of declared nuclear material from peaceful activities nor any indication of undeclared nuclear material or activities; and,

¹³⁵ Ibid.

¹³⁶ International Atomic Energy Agency, Press Release, “Iran Signs Additional Protocol on Nuclear Safeguards,” December 18, 2003. (<https://www.iaea.org/newscenter/news/iran-signs-additional-protocol-nuclear-safeguards>)

¹³⁷ Semira N. Nikou, “Timeline of Iran’s Nuclear Activities,” *United States Institute of Peace*, accessed July 27, 2015. (<http://iranprimer.usip.org/resource/timeline-irans-nuclear-activities>)

- It can monitor the people, facilities, sites, equipment, and materials involved in any military dimensions to ensure timely detection of any resumption of this work.¹³⁸

7. Tie sanctions relief to concrete changes in the conduct, which prompted sanctions.

As explained in the next section, the sanctions relief in the amended JCPOA should link the lifting of sanctions with concrete changes in the conduct that prompted sanctions in the first place. The P5+1 could provide certain temporary relief without lifting sanctions.¹³⁹ Such a model would provide immediate economic relief to the Iranian people while retaining international economic leverage to enforce the agreement and address the range of Iranian illicit conduct that sanctions were aimed at addressing.

PART 4: CONGRESSIONAL DEFENSE OF THE SANCTIONS ARCHITECTURE

In addition to working with the administration to renegotiate the most concerning components of the JCPOA, Congress can also act unilaterally and with the administration to ensure that the sanctions architecture is not precipitous unraveled. This defense of the sanctions architecture will provide peaceful economic leverage to enforce a better deal.

Tie Sanctions Relief to Demonstrable Changes in Iranian Conduct

Since sanctions snapbacks are a flawed mechanism, the lifting of sanctions should be tied to changes in Iran's conduct that prompted the sanctions in the first place. The provision of sanctions relief should only occur after Iran meets specific, verifiable nuclear and illicit finance benchmarks.

Congress should require that the Obama Administration renegotiate the terms of the sanctions relief. The administration and Congress should work together to create a more effective sanctions relief program that deters and punishes Iranian non-compliance and supports the monitoring, verification, and inspection regime. The United States should also make it clear to Iran that Washington will continue to impose sanctions and target Iran's support for terrorism and its abuse of human rights, and particularly the dangerous role played by the IRGC across a range of illicit activities.

The following recommendations outline how Congress can defend the conduct-based sanctions architecture. These recommendations are aimed at providing a more effective mechanism for sanctions relief under an amended JCPOA.

¹³⁸ William Tobey, "The Hollow Core of the Iran Nuclear Deal," *Iran Task Force*, June 2015. (<http://taskforceoniran.org/pdf/PMD.PDF>)

¹³⁹ For a model on how such sanctions relief could be structured, see Mark Dubowitz & Richard Goldberg, "Smart Relief After an Iran Deal," *Foundation for Defense of Democracies*, June 2014. (http://www.defenddemocracy.org/content/uploads/documents/Final_Smart_Sanctions_Report.pdf)

1. Develop a rehabilitation program for designated Iranian banks that puts the onus on Tehran to demonstrate that the banks are no longer engaged in illicit financial conduct.

While U.S. financial sanctions are implemented and enforced by the Treasury Department, Congress can play a crucial role by legislating the terms of a rehabilitation program for designated Iranian banks and by laying out specific benchmarks that must be met prior to the suspension of financial sanctions.

Congress should require that Treasury submit a financial sanctions rehabilitation program plan that includes specific benchmarks that institutions must meet before Treasury suspends or terminates key designations. The rehabilitation program should focus on industry standards of financial integrity. Congress should also require Treasury to include a certification, subject to periodic reviews, that will be published in the Federal Register prior to de-designation.

Long term, the creation of a rehabilitation program would have implications beyond Iranian financial sanctions. This program would provide a framework for financial institutions designated for a range of illicit financial activities to improve their compliance standards and be readmitted to the global financial system as an institution in good standing.

2. Work with the Obama Administration on licenses to foreign financial institutions and foreign companies engaging in business transactions with Iran.

Given the significant presence of the IRGC in key strategic sectors of Iran's economy,¹⁴⁰ including the financial sector, it will very difficult for foreign financial institutions to confirm that their counterparts on any transaction are not connected to the IRGC. Only those institutions with the strictest compliance procedures may be able to differentiate between upstanding Iranian corporations and corrupt firms. Western banks, especially those that have previously run afoul of U.S. sanctions, may be hesitant to re-enter the Iranian financial market and reportedly only considering financing non-Iranian firms working in Iran.¹⁴¹

The United States can incentivize the implementation of strict due diligence and "know your customer" procedures by granting special licenses to companies to operate in Iran, but only for transactions not connected to the IRGC and not in support of terrorism, ballistic missile development, and human rights abuses. Even those foreign financial institutions will face significant risks from IRGC, ballistic missile, terrorism, and human rights sanctions; from lawyers seeking to collect on tens of billions of dollars in judgments on behalf of victims of Iranian terrorism; and from the reputational damage from association with repressive and dangerous regime elements. Buyer and seller beware will likely still be the operating principle for heads of global compliance of these banks long after a nuclear deal is concluded.

¹⁴⁰ Emanuele Ottolenghi & Saeed Ghasseminejad, "Who Really Controls Iran's Economy," *The National Interest*, May 20, 2015. (<http://nationalinterest.org/feature/who-really-controls-irans-economy-12925>); Ali Alfoneh, "Sanctions Relief and the IRGC," *FDD Policy Brief*, June 4, 2015. (<http://www.defenddemocracy.org/media-hit/ali-alfoneh-sanctions-relief-and-the-irgc/>)

¹⁴¹ Martin Arnold, Simond Kerr, & Ben McLannahan, "Post-Deal Iran an Opportunity but Legal Minefield Too," *Financial Times*, July 19, 2015. (<http://www.ft.com/intl/cms/s/0/dc76399e-2aff-11e5-8613-e7aedbb7bdb7.html#axzz3gTRC6LZP>)

This licensing program can, again, serve as a model for other sanctions programs. For example, while isolating Russian oligarchs who engage in corrupt business practices, the United States can provide special licenses for companies for companies that work with independent, well-managed Russian businesses.

3. Legislate criteria for the suspension of sanctions on the Central Bank of Iran and the lifting of the Section 311 finding.

The suspension of sanctions against the Central Bank of Iran, even more than the de-designation of individual Iranian banks, will provide significant relief to Iran and should therefore also be tied to verifiable changes in Iranian behavior. Lawmakers could require the president to certify to Congress, prior to suspending sanctions against the CBI and prior to the lifting of the Section 311 finding, that Iran is no longer a “jurisdiction of primary money laundering concern” and that the CBI, as the central pillar of Iran’s illicit financial activities, is no longer engaged in “support for terrorism,” “pursuit of weapons of mass destruction,” including the development of ballistic missiles, or any “illicit and deceptive financial activities.” Congress should stipulate that Treasury must certify that the entire country’s financial system no longer poses “illicit finance risks for the global financial system.” Congress should consider enshrining the Section 311 finding in legislation and making the lifting of the 311 subject to specific termination criteria relating to Iranian illicit conduct.

The legislation of termination criteria for the Section 311 finding would prevent a politically motivated lifting of the finding like that which occurred in the Banco Delta Asia case.

4. Legislate under what circumstances funds in escrow accounts can be released.

An estimated \$100 billion in Iranian oil revenues have accumulated in semi-restricted escrow accounts and can only be spent on non-sanctionable goods in the countries where they are accumulating or on humanitarian goods from a third country. Between January 2014 and June 30, 2015, under the JPOA, Iran received \$11.9 billion in installments from these escrow accounts.¹⁴² Instead of allowing the repatriation of the funds to Iran, Congress should amend the Iran Threat Reduction Act (ITRA) to create a mechanism for the release of specific amounts in installments if Iran is complying with its commitments. However, these funds should not be repatriated to Iran and be moved to escrow accounts where Iran can spend them on non-sanctionable European goods and where they can be more easily recaptured in a snapback scenario (European banks are more likely to comply than Chinese banks, for example). None of these escrowed oil funds should be repatriated back to Iran until Treasury certifies that Iran is no longer a “primary money laundering concern” and a state sponsor of terrorism and Congress approves this certification.

¹⁴² U.S. Department of the Treasury, “Frequently Asked Questions Relating to the Extension of Temporary Sanctions Relief through June 30, 2015, to Implement the Joint Plan of Action between the P5 + 1 and the Islamic Republic of Iran,” November 25, 2014, pages 5-6. (http://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_11252014.pdf)

5. Enforce and expand designations of IRGC-affiliated entities.

Even an amended JCPOA will not address Iran's support for terrorism, threatening and destabilizing behavior towards its neighbors, and systematic human rights abuses. As such, Congress should require presidential certifications that no sanctions relief will go to the IRGC or IRGC-affiliated entities.

Congress could clarify that it expects that no sanctions on IRGC-linked entities, whether based on nuclear, ballistic missile, or terrorism activities, will be lifted against any entity or financial institution until the president certifies that Iran is no longer a state sponsor of terrorism and the IRGC no longer meets the criteria as a designated entity under U.S. law. Congress should go further and designate the IRGC in its entirety under Executive Order 13224 for its role in directing and supporting international terrorism (it is currently only designated under Executive Order 13382 for proliferation purposes; the Quds Force is designated under EO 13224).

6. Enforce and expand IRGC, terrorism- and human rights-related designations.

Iran's continued support for global terrorism requires that U.S. terrorism sanctions be maintained and expanded. Iran's human rights record has, by numerous expert accounts, deteriorated under President Hassan Rouhani.¹⁴³ Congress should work with the Obama Administration to enhance terrorism sanctions, particularly focused on the IRGC and Quds Force and its various officials, entities, and instrumentalities. Congress should work with the Obama Administration to significantly expand U.S. human rights sanctions against any and all Iranian officials, entities, and instrumentalities engaged in human rights abuses. The penalties for both of these sanctions should go beyond travel bans and asset freezes and target the sectors, entities, and instrumentalities that provide revenues to fund Iranian terrorism activities and/or human rights abuses.

The expansion of these sanctions would help temper market enthusiasm about Iranian business opportunities by demonstrating that transactions with Iran continue to carry significant counterparty and reputational risks. As my colleague and Chairman of FDD's Center on Sanctions and Illicit Finance Juan Zarate explains, "United States will need to amplify its use of financial measures aggressively against key elements of the Iranian economy to deal with the increased risks of Iranian activity."¹⁴⁴

He goes on to explain, "There will likely be overlap between prior nuclear sanctions and new sanctions and preventive measures, but doing this will test the notion that all parties understand that these kinds of measures [non-nuclear related sanctions] were not on the table."¹⁴⁵

¹⁴³ "Iranian Nobel Laureate: Human Rights As Bad As Under Ahmadinejad," *Associated Press*, November 12, 2014. (<http://english.alarabiya.net/en/perspective/features/2014/11/12/Iranian-Nobel-laureate-Human-rights-as-bad-as-under-Ahmadinejad.html>); Sangwon Yoon, "Iran Leader Fails to Deliver on Rights Promises, UN Says," *Bloomberg*, October 27, 2014. (<http://www.bloomberg.com/news/2014-10-27/iran-leader-fails-to-deliver-on-rights-promises-un-says.html>)

¹⁴⁴ Juan Zarate, "Sanctions and the JCPOA," *Testimony before the Senate Foreign Relations Committee*, July 30, 2015. (<http://www.foreign.senate.gov/imo/media/doc/07-30-15%20ZarateTestimony.pdf>)

¹⁴⁵ *Ibid.*

CONCLUSION

As a result of the sunset of restrictions on Iran's nuclear program and ballistic missile program and the access to heavy weaponry, Iran over time will be permitted not only to maintain its current nuclear capacity, but also to develop it further to an industrial-size nuclear program with a near-zero breakout time, an easier-to-hide and more efficient advanced-centrifuge-powered clandestine sneak-out pathway, and multiple heavy water reactors. Iran will be able to buy and sell heavy weaponry with the expiration of the arms embargo, bolstering IRGC military capabilities, and arming the most destabilizing and dangerous regimes and terrorism organizations. Iran will also be able to access key technologies to further develop its long-range ballistic missile program, including for the building of an ICBM that threatens the United States.

At the same time, the JCPOA dismantles much of the international sanctions architecture, while abandoning the core principles of the conduct-based sanctions regime that the Obama and George W. Bush Administrations had built up for more than a decade. The unraveling of the U.S. and EU sanctions regimes leaves Iran as a growing economy increasingly immunized against future economic sanctions snapbacks. It provides Iran with \$100-\$150 billion in early sanctions relief and hundreds of billions of dollars in future relief with which the leading state sponsor of terrorism can continue to fund its dangerous activities. Of great concern, the JCPOA provides Iran with a "nuclear snapback" to intimidate Europe, the United States, and other countries, to refrain from using sanctions as an effective mechanism to enforce the nuclear agreement and to target the full range of its illicit conduct including its support for terrorism.

The JCPOA is a fundamentally flawed deal in its inherent design. Rather than block Iran's pathways to a nuclear bomb, it provides a new path, the "patient path." Congress should require the Obama Administration to renegotiate and fix the major flaws of the agreement and resubmit an amended JCPOA to Congress for review. Throughout American history, Congress has rejected or required amendments to more than 200 treaties and international agreements (of which about 80 were multilateral). This includes major bilateral and multilateral arms control and nuclear agreements during and after the Cold War.

This testimony provides examples of reasonable and modest amendments to the current JCPOA. These amendments would create an agreement that improves the chances of permanently blocking all of the Islamic Republic of Iran's pathways to a nuclear bomb. Simultaneously, Congress should defend the economic sanctions architecture it helped create and tie all future sanctions relief to verifiable changes in Iranian conduct that prompted the sanctions in the first place.



The Implications of Sanctions Relief Under the Iran Agreement

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Testimony submitted to the Senate Committee on Banking, Housing, and Urban Affairs

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Chairman Shelby, Ranking Member Brown, and Members of the Committee, thank you for this opportunity to appear before you today to discuss the nuclear agreement with Iran and the challenges it could pose to the future viability of the U.S. sanctions architecture. These challenges are important to understand because the primary consequence for suspected violations under the Iran deal is the re-imposition of suspended sanctions. Preserving the viability of these financial tools is therefore important for the deal itself.

Maintaining the viability of the U.S. sanctions architecture is also critical if, as the administration maintains, sanctions proactively targeting Iran's sponsorship of terrorism, human rights abuses, and other illicit conduct will remain in place. Indeed, even taking the WMD proliferation issue out of consideration, Iran remains one of the world's most deficient jurisdictions in terms of money laundering and terrorist financing, a fact which presents direct threats to both international and regional security, as well as the international financial system.

Some sanctions-related portions of the Iran deal are quite strong, though they are not crystal clear in the agreement itself and for reasons unknown the administration has not taken the opportunity to make these clear to the public. But others present fatal flaws which, if refined, could make a negotiated settlement with Iran over its nuclear program far more likely to succeed.

"Snap Back"

Several problems are fairly evident and have already received some attention, including the deeply flawed "snap back" mechanism. In the first instance, even if the snap back mechanism works as a means of avoiding multilateral debate over whether to re-impose sanctions, and which to re-impose, there will be no quick snap back since the international debate will simply move to what constitutes a violation, whether the action in question really qualifies as a violation, and then whether it is worth putting the whole deal at risk over such small issues.

Moreover, while the U.S. may have flexibility in the unilateral sanctions in chooses to snap back into place, it is not clear from the language of the deal that such nuance exists regarding international sanctions. And since re-imposing U.N. and European sanctions would upend the deal, there is a built in disincentive to snapping them

back. Moreover, Iran is sure to cheat on the deal—a point administration officials concede—but it will take only small steps over the line at a time. The snap-back mechanism is poorly suited to deal with small violations because when the only sentence available is capital punishment, only capital crimes will be prosecuted. Privately, administration officials maintain that the thirty day notification period would allow time to convince Iran to cease whatever violations were raised, and claim that this time could also be used to negotiate a partial sanctions snap back. That, however, is not at all clear in the text of the deal.

And while it is true that the U.S. can demonstrate all kinds of nuance in deciding which of its own, unilateral sanctions to re-impose, this puts the sanctions onus specifically on the United States instead of maintaining the international sanctions coalition built over the past decade. Iran has worked hard to find ways of chipping away at this international consensus, and in this agreement, as it stands, it has succeeded. In the future, the response to small-scale Iranian violations of the deal could very well be met by U.S. sanctions alone, assuming the administration is willing to act on its prerogative of re-imposing unilateral sanctions.

Money for Bad Actors

According to the State Department's latest terrorist report, released in June, "Iran continued to sponsor terrorist groups around the world, principally through its Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF)...These groups included Lebanese Hizballah, several Iraqi Shia militant groups, Hamas, and Palestine Islamic Jihad." In addition, the State Department accused Iran of "prolonging the civil war in Syria, and worsening the human rights and refugee crisis there." The report described Iran's terror sponsorship as "undiminished." The report also described how Iran increased training and funding for its militias in 2014, supplying them with advanced weaponry. Iran also "provided hundreds of millions of dollars" to Hezbollah and "trained thousands of [the group's] fighters at camps in Iran." The State Department concluded that it does not expect Iran's behavior in Syria to change anytime soon, asserting that "Iran views Syria as a crucial causeway in its weapons supply route to [Hezbollah], its primary beneficiary, and as a key pillar in its 'resistance' front." Indeed, Iran continued to provide the group with "training, weapons, and explosives, as well as political, diplomatic, monetary, and organizational aid."¹

It is against this backdrop that Iran sanctions relief will take place. Whatever the amount of money Iran receives from sanctions relief—Treasury officials now put the number around \$50 billion², but the President himself referred to "\$150 billion parked outside the country"³—Iran will gain access to at least tens of billions of dollars, at first from blocked accounts and later from additional oil sales. And while administration officials have acknowledged that Iran engages in a wide range of nefarious activities, Treasury Secretary Jack Lew opined that "Most of the money Iran receives from sanctions relief will not be used to support those activities."⁴

Presumably, Tehran will indeed spend the vast bulk of these monies on pressing domestic needs. But it will undoubtedly also direct substantial funding to foreign adventures, proxies and allies in keeping with its

¹ Hizballah, Country Reports on Terrorism 2014, U.S. Department of State Bureau of Counterterrorism, <http://www.state.gov/j/crt/crt/2014/239413.htm> (April 2015)

² Treasury Secretary Jack Lew, Senate Foreign Relations Committee, Iran Nuclear Agreement, Hearing, July 23, 2015 (2:09:10) Accessible at <http://www.c-span.org/video/?327246-1/secretaries-kerry-moniz-lew-testimony-iran-nuclear-agreement?327246-1/secretaries-kerry-moniz-lew-testimony-iran-nuclear-agreement/video/> Accessed: August 3, 2015.

³ President of the United States of America, Barack Obama. "Look ... It's My Name on This: Obama Defends the Iran Nuclear Deal." Interview by Jeffrey Goldberg. The Atlantic, 21 May 2015: n. pag. Web.

⁴ Secretary Jacob J. Lew, "Remarks of Secretary Jacob J. Lew at The Washington Institute for Near East Policy 30th Anniversary Gala," U.S. Department of Treasury, <http://www.treasury.gov/press-center/press-releases/Pages/j10040.aspx> (April 29, 2015)

longstanding track record.⁵ That is indeed the expectation of Iran's allies in the region. Hezbollah Secretary General Hassan Nasrallah noted that even under sanctions Iran funded its allies, and anticipated that a now "rich and powerful Iran, which will be open to the world" would be able to do even more: "I say that in the next phase Iran will be able to stand by its allies, friends, the people in the region, and especially the resistance in Palestine and the Palestinian people more than any time in the past, and this is what the others are afraid of."⁶

Even a small percentage of the lower end estimates of Iran's sanction relief windfall would enable Tehran to underwrite a significant increase in what Secretary Lew correctly referred to as "Iran's menacing behavior." In fact, in all likelihood Iranian support for such behaviors will only increase in the wake of a deal over Iran's nuclear program. Iranian leaders who backed the deal will likely feel the need to prove their anti-American and pro-revolutionary bona fides, especially since the deal is widely seen in Iran as a victory for Rouhani and his allies over the Islamic Revolutionary Guard Corp (IRGC) and other hardliners. The Supreme Leader himself may also feel the need—or it may simply be in his interest—to give the IRGC and the Qods Force greater latitude to behave aggressively in the region as a means of balancing domestic bases of power within Iran at a time when Rouhani would be riding high in the wake of the Iran deal.

Terrorism designations will not be removed under the Iran deal, including CISADA secondary sanctions—which is good. But in the past the Treasury Department pointed to the impact of WMD-proliferation sanctions on Hezbollah's bottom line, acknowledging the fungibility of funds across the spectrum of Iran's illicit financial conduct. In March 2014, then-Treasury Undersecretary David Cohen touted the collateral counterterrorism benefit of counter-proliferation sanctions targeting Iran's banking and oil sectors: "In fact, the success of our unprecedented Iran sanctions regime—including sanctions on Iranian financial institutions and Iran's ability to sell its oil—has had the collateral benefit of squeezing Tehran's ability to fund terrorist groups such as Hezbollah."⁷

The administration says it intends to keep Iran's feet to the fire on these behaviors. "Make no mistake; deal or no deal, we will continue to use all our available tools, including sanctions, to counter Iran's menacing behavior," Treasury Secretary Jack Lew said in April. "Iran knows that our host of sanctions focused on its support for terrorism and its violations of human rights are not, and have never been, up for discussion. The Treasury Department's designations of Iranian-backed terrorist groups...will persist, giving us a powerful tool to go after Iran's attempts to fund terror."⁸ There is, however, a very real trust deficit between the administration and the both the U.S. public and our allies in the region regarding U.S. policy to the Middle East (think: chemical weapons red-line) and the Iran deal in particular (think: inspections anywhere, anytime). And here's the rub: to effectively counter Iran's menacing behaviors Iranian entities—maybe banks, big business, bonyad foundations—will have to be potential targets for "all our available tools, including sanctions." But the text of the Iran deal itself enshrines Iran's own red-line on sanctions: "Iran has stated that if sanctions

⁵ Michael Eisenstadt, Simon Henderson, Michael Knights, Matthew Levitt, and Andrew J. Tabler, "PolicyWatch 2456: The Regional Impact of Additional Iranian Money," The Washington Institute for Near East Policy, <http://www.washingtoninstitute.org/policy-analysis/view/the-regional-impact-of-additional-iranian-money> (July 28, 2015)

⁶ Hassan Nasrallah, "Interview of Hassan Nasrallah with Al-Ikhbariya Al-Soriya" (Arabic), Interview by Rania al-Dhanoun, Al-Ikhbariya Al-Soriya, April 6, 2015. <http://alikhbariya.sy/index.php?d=1&id=1073>

⁷ Under Secretary for Terrorism and Financial Intelligence David Cohen, "Remarks of Under Secretary for Terrorism and Financial Intelligence David Cohen before the Center for a New American Security on 'Confronting New Threats in Terrorist Financing,'" U.S. Department of Treasury, <http://www.treasury.gov/press-center/press-releases/Pages/jl2308.aspx> (March 4, 2014)

⁸ Secretary Jacob J. Lew, "Remarks of Secretary Jacob J. Lew at The Washington Institute for Near East Policy 30th Anniversary Gala," U.S. Department of Treasury, <http://www.treasury.gov/press-center/press-releases/Pages/jl0040.aspx> (April 29, 2015)

are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under the JCPOA in whole or in part.”⁹ Will the U.S. risk undermining the Iran deal by sanctioning Iranian entities for supporting terrorism or abusing human rights?

Delisting Bad Actors

There is also the issue of bad Iranian actors slated to be removed from UN, U.S., or EU sanctions lists under the Iran deal. Some of these may not be delisted right away (in the case of the U.S.), while others could be delisted very quickly (in the case of the EU). In some cases, Iranian government entities removed from U.S. lists would still be off limits to U.S. persons (and foreign entities owned by U.S. persons) under the Iranian Transactions and Sanctions Regulations. While the administration has not made this clear to the public, U.S. officials reportedly scrubbed the WMD proliferation lists (notably Executive Order 13382) prior to agreeing to the delisting of any entity and refused to delist those connected to the IRGC. If accurate, the administration should make this clear, produce the list of IRGC-related entities that are to remain designated, proactively publicize this list so the business community is aware these entities remain still-blacklisted, and explain how it justifies this position despite the fact that a layman’s reading of the nuclear deal suggests all proliferation designees are to be delisted.

The fact is that Treasury Department investigations often revealed that Iranian entities were involved in more than one type of illicit activity and therefore qualified for designation under multiple executive orders, such as those for WMD proliferation, human rights abuses, and support for terrorism. In rare cases, an Iranian entity was designated under more than one authority—like IRGC Quds Force commander Qassem Suleimani, designated under WMD proliferation (2007), human rights abuses (2011), and support for terrorism (2011). But in the vast majority of cases, the person or entity was designated only once—under the WMD proliferation authority, which enjoyed significantly more support from European and other allies than designations under terrorism or other authorities. This means that some entities engaged in illicit Iranian activities beyond WMD proliferation—but that were designated solely under authorities targeting Iran’s proliferation activities—are slated for delisting under the Iran nuclear deal even despite the effort to keep the ban on IRGC-related entities. Consider just a few examples related to support for terrorism:

- **Iran Air:** Iran Air has been used by the IRGC to transport rockets or missiles—sometimes disguised on flight manifests as medicine and generic spare parts—to war-ravaged countries like Syria.¹⁰
- **Islamic Republic of Iran Shipping Lines (IRISL):** On more than one occasion IRISL ships were intercepted carrying arms intended for militant proxies such as Hezbollah. In January 2009 the U.S. Navy stopped the Monchegorsk, an IRISL chartered vessel that was in route to Syria carrying a shipment of Iranian arms. Later that year, the Israeli Navy intercepted the Francop, a vessel carrying containers clearly marked “IRISL” with some 500 tons of weapons stored on board which Israeli officials believe was bound for Hezbollah via Syria.¹¹

⁹ See para. 37, “United Nations Security Council Resolution 2231 (2015),” United Nations Security Council, <http://www.un.org/en/sc/inc/pages/pdf/pow/RES2231E.pdf> (July 20, 2015)

¹⁰ “Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities,” U.S. Department of Treasury, <http://www.treasury.gov/press-center/press-releases/Pages/tg1217.aspx> (June 23, 2011)

¹¹ Jeffrey White, “Iran and Hizballah: Significance of the Francop Interception,” The Washington Institute for Near East Policy, <http://www.washingtoninstitute.org/policy-analysis/view/iran-and-hizballah-significance-of-the-francop-interception> (November 12, 2009)

- **Future Bank:** Future Bank was established in 2004 as a joint venture between two Iranian banks, Bank Melli and Bank Saderat, and a private bank based in Bahrain.¹² While Bank Melli is to be delisted, Bank Saderat, which has been used by the Government of Iran to channel funds to terrorist organizations, is not. While Future Bank was designated under a proliferation authority, one of its parent banks remains blacklisted for terror financing.

Other entities to be delisted under this deal have engaged in the kind of deceptive banking practices that threaten the integrity of the international financial system, including:

- **Bank Sepah:** Like other Iranian banks and entities, Bank Sepah has engaged in a range of deceptive practices in an effort to avoid detection, including requesting that other financial institutions take its name off of transactions when processing them in the international financial system.¹³
- **Europaisch-Iranische Handelsbank (EIH):** EIH engaged in the type of deceptive practices that have become the hallmark of Iranian government-controlled financial institutions by actively obscuring Iranian involvement in financial transactions.¹⁴

Even if these actions were in support of nuclear related activities that are no longer banned, the fact remains that if these banks were willing to engage in this type of illicit behavior before, there is nothing to stop them from engaging in the same practices to circumvent other sanctions (i.e. terrorism and human rights abuses); and they represent a hazard to the international financial community.

There are also some especially egregious entities, like the IRGC engineering firm *Khatam al Anbia*, that are to remain on the U.S. designation list but will be removed from the EU list. Indeed, the **IRGC** and the **Qods Force** are both scheduled to be delisted by the EU even as they remain sanctioned by the United States. It is, of course, good that these extremely aggressive and malevolent actors remain designated by the U.S., but the fact that they will be delisted by the EU under the terms of the Iran deal means that the common cause that over time came to define the trans-Atlantic approach to Iran's illicit conduct is crumbling. It also means the IRGC and Qods Force will be able to operate more openly and effectively in and through Europe.

Moreover, it puts at risk one of the most effective informal sanctions in the financial warfare toolkit: the de facto multilateralization of even unilateral U.S. sanctions. Until now, a foreign businessman or company in Europe or Asia would think twice before doing business with an Iranian person or entity designated by the United States, even if that person or entity was not designated under EU, UN or other international authorities. Despite having no legal obligation to do so, the foreign businessman or company would have to weigh the business and reputational risk of doing business with a U.S.-designated entity. But now, that businessman or company may weigh risk differently—especially if they do not have business interests in the U.S.—since the national, regional, and multilateral authorities to which they do legally have to answer will have given an apparently clean bill of health to these entities still blacklisted by the U.S. It is one thing if the U.S. blacklists an entity and others choose not to follow suit, but it is another matter altogether if our allies remove blacklisted entities from their lists while we keep them on ours.

¹² "Treasury Designates Iran-Controlled Bank for Proliferation Future Bank Controlled by Iran's Bank Melli," U.S. Department of Treasury, <http://www.treasury.gov/press-center/press-releases/Pages/hp869.aspx> (March 12, 2008)

¹³ Stuart Levey Under Secretary for Terrorism and Financial Intelligence, "Testimony of Stuart Levey Under Secretary for Terrorism and Financial Intelligence Before the Senate Committee on Banking, Housing and Urban Affairs," U.S. Department of Treasury, <http://www.treasury.gov/press-center/press-releases/Pages/hp325.aspx> (March 21, 2007)

¹⁴ "Treasury Department Targets Iranian-Owned Bank in Germany Facilitating Iran's Proliferation Activities," U.S. Department of Treasury, <http://www.treasury.gov/press-center/press-releases/Pages/tg847.aspx> (September 7, 2010)

The Risks That Remain

Just a few weeks ago, the Financial Action Task Force (FATF) issued its latest public statement identifying jurisdictions with "strategic deficiencies" which pose risks to the international financial system. As the technocratic, apolitical, multilateral body charged with setting global standards for anti-money laundering and counter-terror financing, FATF is uniquely positioned to opine on these matters. It is therefore very significant that it found that (as in past reports) only two jurisdictions—Iran and North Korea—present such "ongoing and substantial money laundering and terrorist financing (ML/TF) risks" that FATF felt the need to call on the international community to apply active "counter-measures" to protect themselves and the larger international financial system.¹⁵

FATF's statement on Iran included this blunt language:

The FATF remains particularly and exceptionally concerned about Iran's failure to address the risk of terrorist financing and the serious threat this poses to the integrity of the international financial system, despite Iran's recent engagement with the FATF.

The FATF reaffirms its call on members and urges all jurisdictions to advise their financial institutions to give special attention to business relationships and transactions with Iran, including Iranian companies and financial institutions. In addition to enhanced scrutiny, the FATF reaffirms its 25 February 2009 call on its members and urges all jurisdictions to apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism (ML/FT) risks emanating from Iran. The FATF continues to urge jurisdictions to protect against correspondent relationships being used to bypass or evade counter-measures and risk mitigation practices and to take into account ML/FT risks when considering requests by Iranian financial institutions to open branches and subsidiaries in their jurisdiction. Due to the continuing terrorist financing threat emanating from Iran, jurisdictions should consider the steps already taken and possible additional safeguards or strengthen existing ones.

But now, under the Iran deal, most of the world, including Europe, will be looking to expand business relationships with Iran. A respected European journal already contacted this author asking for an article on what more Europe could do to proactively re-integrate Iran into the international financial system. And one could forgive the editors for thinking this should now be our collective policy, since both the JCPOA specifically talks about doing nothing to undermine normalization of trade and economic relations with Iran (para 29)¹⁶ and UNSCR 2231 emphasizes that the JCPOA is conducive to promoting and facilitating development of normal economic and trade contacts and cooperation with Iran.¹⁷

¹⁵ "High-risk and non-cooperative jurisdictions," Financial Action Task Force (FATF) Public Statement, https://www.mof.go.jp/international_policy/convention/fatf/fatfhouhou_270715_1.pdf (June 26, 2015)

¹⁶ "Joint Comprehensive Plan of Action," Vienna, July 14, 2015, para 29,

http://eeas.europa.eu/statements/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf

¹⁷ United Nations Security Council, "Resolution 2231 (2015)," July 20, 2015

In private conversations, U.S. officials say the administration's interpretation of the deal enables it to do several unilateral things that will hinder Iran's economic development, including:

- Denying Iran access to the U.S. financial system and the U.S. dollar
- Denying Iran access to the U-Turn transaction mechanism, through which in dollarized international oil transactions in the past (effectively forcing Iran to sell oil in other currencies)
- Aggressively enforcing CISADA's secondary sanctions on foreign entities doing business with entities that remain listed for terrorism or human rights issues
- Leveraging the snap-back clause to limit business with Iran by virtue of there being no grandfathering of business ventures that begin now, before violations kick in snap-back sanctions (thereby significantly increasing the business risk to going in now)

The problem is that these laudable positions have not been made public in any meaningful way, and they are only effective if they are aggressively publicized and then equally aggressively enforced. The fact is, as U.S. officials will concede in private conversations, that the administration suffers from a trust deficit. Whether one believes that is deserved or not, it is there. And the fact is that not only are none of the positions bulleted above clear within the Iran deal, the deal could easily be read as prohibiting each of them. Failing to make these positions public not only undermines their utility, it also makes people question whether it is the administration's intention to act on these positions moving forward. These are critical issues, which should not be open to interpretation under the Iran deal.

For example, a careful read of Annex II to the JCPOA appears to indicate that sanctions will remain for any foreign financial institutions dealing with the IRGC or any of its agents or affiliates whose properties are blocked pursuant to the International Emergency Economic Powers Act. JCPOA points to removing sanctions only regarding CISADA Section 104(c)(2)E(ii)(I)—which is specific only to "Iran's proliferation of weapons of mass destruction or delivery systems of weapons of mass destruction." The IRGC portions remain. How aggressively does the administration intend to enforce this potentially powerful tool, given the long reach of the IRGC in the Iranian economy?

And it is absolutely critical that the U.S. take an aggressive stand on these issues. Not only because Europe and the rest of the world clearly will not, leaving it up to the U.S. alone to hold Iran's feet to the fire through limited secondary sanctions and denying Iran access to U.S. markets and dollars, but also because failure to do so would begin the unraveling of the formal and informal sanctions infrastructure build over the past ten years.

For years now, U.S. officials have pointed to the conduct-based nature of Iran sanctions. Illicit conduct brought upon Iran sanctions aimed to counter said conduct. But today, as FATF and the State Department and others have noted, Iran's "menacing behavior" continues and will likely increase. The conduct continues, and if the conduct-based consequence does not kick in it will be the death knell of this toolkit. Without follow through, the threats are simply not credible. If the risks are without consequence, they are not really risks at all.

And, at the very time we most need to be able to highlight the fact that Iran is a tremendously risky financial jurisdiction—where the IRGC controls much of the economy, human rights abuses are on the rise, and support for militancy and terrorism continues unabated—we are denied under the Iran deal the ability to discourage business with Iran. The best we can do is to delineate Iran's ongoing illicit conduct—from supporting Hezbollah, to Assad and the Houthis, to human rights abuses, etc.—and warn that failure to do so could not only lead to U.S. secondary sanctions but also—maybe—reputational risk. The former depends on U.S. follow through, while the latter depends on how the rest of the international community perceived risk in the wake of an Iran deal that does not discourage, but actively encourages business with Iran. How effective

will it be to highlight the role of the IRGC in Iran's economy once the IRGC has been removed from the EU sanctions list? Major international banks will be slow to move back into the Iranian markets, but major non-U.S. companies are likely to trip over one another in a rush to re-enter the Iranian market—which, according to the *New York Times*, is being described in Europe as an "El Dorado" and potential "bonanza."¹⁸ The kind of outreach to the private that the U.S. Treasury leveraged so successfully in its financial warfare targeting Iran's illicit conduct—what the I once referred to as "Stuart Levey's War"—is now effectively no longer on the table.

Moving Ahead

Diplomatic negotiations are the best way to achieve the goal of shutting down Iran's nuclear weapons program. There is plenty of reason to believe that this deal falls short of that goal, however, which does not mean that the alternative is war but rather addressing the shortcomings of the current deal. Beyond the issue of the snap back mechanism, which needs addressing as well, there are several ways in which this deal could be improved on the sanctions front as well.

1. Maintain in the deal language that enables both the U.S. and its partners to continue to use sanctions and economic tools as a means of addressing Iranian illicit conduct, even as proliferation sanctions are rolled back.
2. Maintain the current balance of U.S. unilateral and regional and global multilateral sanctions. As of now, UN and EU sanctions largely disappear, and what remains are only U.S. sanctions. To be sure, U.S. secondary sanctions for non-WMD proliferation illicit conduct remain in place and would impact the behavior of European and other foreign banks and businesses, but this puts the onus solely on the U.S. In fact, the deal is not a bilateral U.S.-Iran deal but a multilateral one and our partners should be expected to do their part to hold Iran accountable both for its ongoing illicit conduct and for any violations of the deal that may arise.
3. Engage in a robust public affairs campaign in tandem with an Iran deal to educate the international business and financial communities of (a) the ongoing, significant risks that Iran poses as a financial jurisdiction; (b) Iran's continued sponsorship of terrorism, financing of terrorism, money laundering, and human rights abuses; (c) the IRGC's ongoing role in these malevolent activities and the IRGC's still growing dominance of the Iranian market; and (d) the concrete business and reputational risks that these present for entities that engage in business with Iran.

In any event, the administration's interpretations of the Iran deal should be made explicit so that the American public, our allies, the business and finance communities, and Iran understand exactly how we intend to implement the deal.

¹⁸ Alissa J. Rubin, "After Deal, Europeans are Eager to Do Business in Iran," *New York Times*, August 1, 2015

PREPARED STATEMENT OF NICHOLAS BURNS

GOODMAN PROFESSOR OF DIPLOMACY AND INTERNATIONAL RELATIONS

HARVARD KENNEDY SCHOOL

AUGUST 5, 2015

Mr. Chairman, Ranking Member Brown and Members of the Committee, thank you for this opportunity to testify on the international agreement to prevent Iran from becoming a nuclear weapons power and the implications for sanctions relief.

This is one of the most urgent and important challenges for our country, for our European allies as well as for Israel and our Arab partners in the Middle East. The United States must thwart Iran's nuclear weapons ambitions and its determination to become the dominant military power in the region.

This will be a long-term struggle requiring the focus and determination of the next two American Presidents after President Obama to ensure Iran complies with the agreement. We should thus marshal our diplomatic, economic and military strength to block Iran now and to contain its power in the region in the years ahead.

With this in mind, I support the Iran nuclear agreement and urge the Congress to vote in favor of it in September.

This is, understandably, a difficult decision for many Members of Congress. It is an agreement that includes clear benefits for our national security but risks, as well. It is also a painful agreement, involving tradeoffs and compromises with a bitter adversary of our country—the government of Iran.

I believe, however, that if it is implemented effectively, the agreement will restrict and weaken Iran's nuclear program for more than a decade and help to deny it a nuclear weapons capacity over the long term. That crucial advantage has convinced me that the Obama administration is right to seek Congressional approval for this agreement.

I have followed the Iran nuclear issue closely for the last decade. From 2005 until 2008, I had lead responsibility in the State Department on Iran policy. During the second term of the George W. Bush administration, we worked hard to blunt Iran's nuclear efforts. We created in 2005 the group that has since led the global effort against Iran—the United States, the United Kingdom, France, Russia, China and Germany (the P-5 plus One). This group offered to negotiate with Iran in 2006 and again in 2007. We were rebuffed on both occasions by the Iranian regime.

When Iran accelerated its nuclear research program, we turned to sanctions. I helped to negotiate for the United States the first three United Nations Security Council Chapter VII sanctions resolutions to punish Iran for its actions. Led by the Treasury Department, we initiated U.S. financial sanctions and encouraged the European Union to do the same. We built a global coalition against Iran. While Iran became increasingly isolated, however, it chose to accelerate its nuclear research efforts in defiance of international law.

When President Obama came into office in 2009, Iran had made considerable progress in advancing its uranium and plutonium programs. It made further progress in his first years in office and was on its way to become, in effect, a nuclear threshold state. In response, President Obama expanded the sanctions and coordinated an aggressive international campaign to punish and isolate the Iranian regime.

Congress made a vital contribution by strengthening American sanctions even further. This increasingly global and comprehensive sanctions campaign weakened the Iranian economy and ultimately convinced the Iranian government to agree to negotiate during the past eighteen months.

The Obama and Bush Administrations and the Congress acted over 10 years to expand American leverage against Iran and to coerce it to accept negotiations. Despite these efforts, Iran was far along the nuclear continuum when negotiations began in earnest in 2013.

It made sense for the United States to commit to negotiations with Iran in 2013. We retained then, as we do now, the capacity and right to use military force to prevent Iran from achieving a nuclear weapon should that be necessary. It is important to note that there were alternative negotiating frameworks available to the Obama administration in 2013 that might have served our interest in containing Iran's nuclear program more effectively. But, the issue before the Congress now is the specific agreement that has been negotiated by the Obama team. That is thus the focus of my own testimony today.

In my judgment, the Joint Comprehensive Plan of Action (JCPOA) negotiated by Secretaries Kerry and Moniz is a solid and sensible agreement. It has many concrete advantages for the United States.

First, the agreement will arrest Iran's rapid forward movement on its nuclear research programs over the past decade since the inauguration of former President Mahmoud Ahmadinejad. It will essentially freeze that program. The restrictions the United States negotiated will effectively prevent Iran from producing fissile material for a nuclear weapon (either through uranium enrichment or the plutonium process) at its nuclear facilities for at least 10 to 15 years.

The number of centrifuges at the Natanz plant will be reduced by two-thirds. Use of advanced centrifuges will not be permitted for a decade. Iran's store of enriched uranium will be restricted to levels below those needed for a nuclear device. In addition, there will be no enrichment at all at the Fordow plant for 15 years.

The Administration also succeeded in blocking Iran's plutonium program. The core of the Arak Heavy Water Reactor will be dismantled. The reactor will be transformed to make it impossible to produce sufficient quantities of plutonium for a nuclear device. Spent fuel will be transported out of Iran. There will be no reprocessing of fuel for at least 15 years.

The most important advantage for the United States is that Iran's current break-out time to a nuclear weapon will be lengthened from 2 to 3 months now to roughly 1 year once the agreement is implemented. This is a substantial benefit for our security and those of our friends in the Middle East. It sets back the Iranian nuclear program by a significant margin and was a major concession by the Iranian government in this negotiation.

Significantly strengthened inspections of Iran's nuclear supply chain for the next 25 years is a second advantage of the nuclear agreement. Iran has also agreed to be subjected to permanent and enhanced IAEA verification and monitoring under the Additional Protocol. This will give the IAEA much greater insights into Iran's nuclear program and will increase substantially the probability of the United States detecting any Iranian deviations from the agreement.

Third, sanctions will not be lifted until Iran implements the agreement in every respect. This could take up to 3 to 6 months. The United States and other countries should demand full and unambiguous Iranian implementation to deconstruct and modify its nuclear program according to the letter of the agreement. And, after sanctions are lifted, we must be ready and willing to re-impose them should Iran seek to cut corners, cheat or test the integrity of the agreement in any way. In addition, the United States will continue to maintain sanctions on Iran for terrorism and human rights violations.

A final advantage, Mr. Chairman, is that this agreement gives us a chance to prevent an Iranian nuclear weapon through diplomacy and negotiations, rather than through war. While the United States should be ready to use force against Iran if it approaches our red line of acquisition of a nuclear weapon, the more effective strategy at this point is to coerce them through negotiations. And, it will be more advantageous for the United States to contain a non-nuclear Iran in the Middle East for the next decade than to contend with a country on the threshold of a nuclear weapon. In this respect, I admire the commitment, energy and the achievements of Secretary Kerry, Secretary Moniz and their team.

While the benefits of this agreement for the United States are substantial, there are also risks in moving ahead. The most significant, in my judgment, is that while Iran's program will be frozen for a decade, the superstructure of its nuclear apparatus will remain intact, much of it in mothballs. Iran could choose to rebuild a civil nuclear program after the restrictions begin to end 10 to 15 years from now. This could give Tehran a base from which to attempt to build a covert nuclear weapons program at some point in the future.

Here is where considerable challenges may arise for the United States and its allies. While we can be confident Iran's program will be effectively stymied for the first 10 to 15 years of the agreement, many of those restrictions will loosen and disappear altogether in the decade after. We will need to put in place a series of mitigating measures to deter Iran from diverting any part of its revived civil nuclear program to military activities.

President Obama and his team will need to reassure Congress about the effectiveness and credibility of these initiatives to keep Iran away from a nuclear weapon after the first decade of this agreement. This should include a direct, public and unambiguous American commitment to use military force to deter Iran should it ever get close to construction of a nuclear weapon. In addition, the United States should assemble a coalition of strong partners willing to re-impose sanctions should Iran deviate from the agreement. The United States and its partners should also bolster the capacity of the IAEA and our own governments to be fully capable of detecting Iranian cheating. In sum, we will have to construct a long-term strategic deterrent to convince the Iranian government that it is not in its interest to pursue a nuclear weapons program a decade from now.

Containing Iran will be a difficult challenge for American diplomacy. I differ with those critics, however, who believe that the expiration of the agreement will make Iranian acquisition of a nuclear weapon all but certain a decade or two from now. Much will depend on the Iranian leadership at that time. Will they want to risk another generation of international isolation and sanctions if they drive toward a nuclear weapon? Will they risk the possibility of an American or Israeli use of military force in response? A decision by Iran to turn back to a nuclear weapons ambition is a possibility, but by no means a certainty. The actions and resolve of the United States will have a major impact on Iran's calculations. It will be up to the President and Congress at that time to make clear to Iran that we will be ready to use any option available to us, including the use of military force, to prevent Iran from becoming a nuclear weapons power.

The overall effectiveness of the agreement will thus require the Obama administration and its successors to maintain a very tough inspections regime and to be ready to re-impose sanctions if Iran seeks an illicit nuclear weapons program in the future.

Congress is right to focus on these concerns and to require concrete assurances from the Administration that they can be overcome. Specifically, the Administration will need to focus hard on the possibility that Iran will cheat, as it has done so often in the past and attempt to construct covert facilities. Should this occur, the United States would need to ensure that the "managed inspections" set out in the agreement would work effectively. If Iran were to violate the agreement, American sanctions should be re-imposed. Gaining broader international agreement for sanctions would be a more effective way to intimidate the Iranian authorities. This would be a priority, but also a challenging hurdle, for American diplomacy.

A final risk is the agreement that the prohibitions on Iran's conventional arms sales and purchases and ballistic missiles will end in 5 and 8 years, respectively, after the agreement is in force. I remain opposed to this compromise. In my view, it could embolden Iran and strengthen its conventional capacity in ways detrimental to our own interest. The next U.S. administration will need to construct a new coalition to attempt to restrict and sanction Iran in these two areas.

On balance, however, I believe the nuclear deal will deliver more advantages than disadvantages to the United States. There are greater risks, in my judgment, in turning down the agreement and freeing Iran from the considerable set of restrictions it has now accepted for the next decade and beyond.

Most importantly, I do not see a more effective, credible or realistic alternative that would give the United States a greater probability at this point of preventing an Iranian nuclear weapon. That is the key question Members of Congress should ask before you vote. Is there a more effective way forward than the one negotiated by the Obama administration?

The most common criticism of the nuclear deal is that the United States should have walked away from the talks during the last year, sanctioned Iran further and attempted to negotiate a better and stronger agreement. Some experts have recommended that Congress vote to disapprove the President's policies or to pass a bill that would alter the deal in such a way that a fundamental renegotiation of the agreement would be necessary.

If I thought it was realistic to renegotiate the agreement to make it stronger, I would support that option. But, I don't believe it would be possible to do so and, at the same time, to maintain the integrity of our coalition against Iran.

While this "No Deal" scenario could play out in many, different ways, I think it is probable that it would leave the United States weaker, rather than stronger, in confronting Iran's nuclear program. If the United States left the negotiations unilaterally, I don't believe it is likely that Russia and China and even possibly the European allies and other key international economic powers would follow us out the door. These countries are all strong supporters of the nuclear deal before the Congress today. The global coalition and the sanctions regime we spent the last 10 years building would likely fray and weaken over time. We would lose the strong leverage that brought Iran to the negotiating table. While American sanctions were very important in convincing Iran to negotiate, it was the global nature of the sanctions with buy-in from nearly every major economy in the world, that also made a critical difference in cutting off Iran from the international banking and financial system during the past few years. All of these benefits would be at risk after a U.S. walkout.

Most importantly, the strong restrictions that have effectively frozen Iran's nuclear program since January 2014 would all be lifted if the negotiations are ended. The negotiated agreement would cease to be in force. Iran would be free to resume its advanced uranium enrichment and plutonium programs. We would lose the IAEA's insights into Iran's program as the inspections regime would weaken. Iran

would not be 1 year away from a bomb under the Obama agreement but on the threshold of a nuclear weapons capability.

While I don't agree that this "No Deal" scenario would lead inevitably to war, it would leave the United States worse off. On balance, this alternative is not preferable to the concrete restrictions on Iran's program ensured by the nuclear deal.

If it seeks to disapprove the President's policy, Congress should offer a realistic and effective alternative. But, I am unaware of any credible alternative that would serve our interests more effectively at this point than the agreement proposed by the Obama administration and the other major countries of the world.

Rather than vote to disapprove the President's policy, I hope members of both parties will work with the Administration to strengthen the ability of the United States to implement the agreement successfully and to contain simultaneously Iranian power in the Middle East.

We should create, in effect, a two-track American policy toward Iran in the future. On the one hand, we should work to ensure Iran implements the nuclear deal. On the other hand, we will need to construct a renewed effort with Israel, Turkey and our friends in the Arab world to contain Iran's growing power in the region.

Now that we are talking to Iran again after 35 years of minimal contact, there may be issues on which contact with Tehran will be in our interest. Protecting the Afghan government from Taliban assaults is one such possibility. Convincing Iran to withdraw its support for President Assad in Syria is another.

But, I do not believe we will experience anything approaching a normal relationship with the Iranian government as some in our own country have suggested. This is not the time to restore full diplomatic relations with its government. There is too much that still separates us to justify such a decision. In fact, our larger interests in the Middle East require the creation of a coalition of countries to oppose Iran as it makes an assertive push for power into the heart of the Sunni world in Iraq, Syria, Lebanon and Yemen. The United States will have greater success, however, in confronting a non-nuclear Iran over the next decade rather than an Iran with nuclear weapons. This is another advantage of the nuclear deal.

With this in mind, there is more the Obama administration can do to ensure effective implementation of the nuclear deal and to push back against a more assertive Iranian policy in the region. Here are some concrete suggestions toward that end.

- A first-order diplomatic priority should be for the United States to do everything in its power to maintain the ability to re-impose sanctions on Iran, if necessary. Russia and, especially, China will likely be weak and undependable partners in this regard. The United States should thus focus on securing commitments from the European allies that they will work with us to re-impose sanctions in the future, if necessary. The Administration should also convince Japan, South Korea, India and other major economies to be ready to curtail commercial links to Iran and return to sanctions should Iran violate the nuclear agreement.
- The United States should maintain a prohibition on trade with Iran for American business.
- In addition, we should maintain terrorism sanctions on General Qassem Suleimani, the Commander of the Iranian Revolutionary Guard Corps. His actions continue to be a threat to America's national security interests in the Middle East.
- The United States should also remind its allies and partners around the world that, if Iran violates the nuclear deal, foreign companies that decided to do business with Iran might subsequently lose their investment when sanctions are re-imposed.
- The United States should set a very high bar for Iran on implementation of the agreement. Specifically, the United States should call attention to even the most minor Iranian transgressions from the start of the implementation process. If we don't set an exacting standard, Iran may well diminish the integrity of the inspections regime by cutting corners and testing its limits. Establishing a tough-minded policy now is the right way to convince Iran there will be immediate penalties—a return to sanctions—should it not implement the deal fully and completely;
- The United States should reaffirm publicly that we have vital national interests in the Persian Gulf and that we will use military force, if necessary, to defend them. That was the essence of the Carter Doctrine of the late 1970s and has been the policy of Republican and Democratic Administrations since. President Obama should continue the campaign he has already begun to assemble a strong coalition of Gulf States to contain Iranian power in the region. This will

require accelerated military assistance to our Arab partners and a strong, visible and continuous American military presence in the region.

- The United States should try to close ranks with Israel and to strengthen even further our long-standing military partnership. The United States-Israel 10-year military assistance agreement that I led in negotiating in 2007 expires in 2 years. The Obama administration could reaffirm our ongoing commitment to Israel's Qualitative Military Edge (QME) over any potential aggressor in the Middle East region. The Administration should accelerate military technology transfers to Israel to head off any potential challenge to Israel from Iran or, as is more likely, from its proxies, Hezbollah and Hamas.
- The United States and Israel should also make a renewed effort to diminish their public divisions. President Obama should take steps to work more effectively with Prime Minister Netanyahu. But, repairing such a wide public dispute requires both leaders to make it work. Prime Minister Netanyahu would be well advised to diminish his excessive public criticism of the U.S. Government. I found in my diplomatic career that allies work best when they work out their differences privately rather than publicly.
- President Obama should reaffirm publicly and in the most unmistakable terms, his readiness to deploy military force to strike Iran should it violate the agreement and seek to race toward a nuclear weapon. This would help to create a more durable American strategic deterrence to convince Iran that abiding by the nuclear agreement is in its best interest.
- Finally, the United States should also press Iran to meet the grievances of American families who lost their loved ones in Iranian-inspired attacks on American citizens in past decades. This includes, of course, the bombings of the U.S. Embassy in Beirut and the U.S. Marine Barracks in 1983. It also includes the assassination of Dr. Malcolm Kerr, President of the American University of Beirut, in January 1984. His family has brought suit against Iran in U.S. Federal Court as they believe Iran authorized his murder through its proxies in Lebanon. There are many other such civilian cases against Iran. Implementation of the nuclear deal should not be made conditional on resolution of these cases, in my judgment. But, we should not agree to resume full diplomatic relations until Iran has agreed to settle them. By raising them now, we would send Iran an unmistakable signal that we expect these cases to be adjudicated fairly and with justice for the American families in the future.
- At the same time, the Administration must continue to press as an urgent priority for the release of those Americans imprisoned or missing in Iran.

These steps would help to strengthen our ability to implement the Iran nuclear agreement and to put Iran on notice that it has a long way to go before it can resume a normal relationship with the United States.

Successful implementation of the nuclear deal will require strong, self confident and determined American leadership. We are the indispensable center of the P5+1 group that negotiated the agreement. We have to insist on full Iranian implementation of the agreement. We must assemble an Arab coalition to contain Iran in the region. And we have to remain Israel's strong and faithful partner in a violent, turbulent, revolutionary era in Middle East history.

Mr. Chairman, I urge members of Congress to support this agreement. A vote of disapproval in the absence of a credible alternative, would, after 10 years of effort, be self-defeating for our country.

If Congress votes to disapprove and manages to override the President's veto, it would very likely dismantle the agreement, lead to the gradual disintegration of the global sanctions regime and remove all current restrictions on Iran's nuclear efforts. Such a result would leave Iran closer to a nuclear weapon. That is not a sensible course for our country.

I also fear a vote of disapproval would weaken the effectiveness and credibility of the United States in the Middle East and around the world.

There is another path open to Congress. Work with the President to strengthen America's position in the Middle East. Move forward with the nuclear deal. Push back against Iranian power in the region. A Congress that sought greater unity with President Obama would help to strengthen our country for the struggles that are inevitably ahead with Iran in the years to come.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR CRAPO
FROM WENDY SHERMAN**

Q.1. If Congress imposed economic sanctions on Iran, even those suspended under the JCPOA, for the continued detention of Americans, such as Pastor Saeed Abedini, would that be a violation of the agreement?

A.1. Under the JCPOA, we have only committed to relieve nuclear-related sanctions. We have not made any commitments that prevent us from using sanctions to address other non-nuclear issues. What we have committed to do is quite specific: not to re-impose those nuclear-related sanctions specified in Annex II of the JCPOA and not to impose new nuclear-related sanctions, contingent on Iran abiding by its JCPOA commitments. We would also not be precluded from sanctioning specific Iranian actors or sectors, if the circumstances warranted. Our human rights sanctions authorities remain in place and are unaffected by the JCPOA. Moreover, we have made it clear to Iran that we would continue to use and enforce sanctions to address its destabilizing activities in the region.

That said, the United States would not be acting in good faith if we simply re-imposed all of our nuclear-related sanctions the day after they were relieved using some other justification. In the end, if we decide to re-impose sanctions for any reason, it will be important that we have a credible rationale. That has always been the case and will remain the case in the future.

Q.2. The Administration has continuously maintained that discussion of the situation involving Pastor Abedini and the other Americans to be a “side issue” for the JCPOA talks. Since the international conventional arms embargo was not a part of the sanctions regime relating to Iran’s illicit nuclear enrichment activities, why was that “side issue” taken up in the talks and the final agreement?

A.2. The U.N. arms embargo is, in fact, directly associated with Iran’s nuclear program. The arms embargo and missile-related restrictions on Iran under U.N. Security Council Resolution (UNSCR) 1929 were specifically designed to pressure Iran to address the international community’s concerns with its nuclear program. The other members of the Security Council agreed to them on that basis. UNSCR 1929 anticipated that these restrictions would be lifted when the international concerns regarding Iran’s nuclear program had been addressed. This is why relief from those sanctions was part of the U.N. Security Council sanctions relief contemplated in the JCPOA. During negotiations, Iran pushed for a lifting of the arms embargo and missile restrictions on Implementation Day, which is the day that the IAEA certifies that Iran has taken all the key nuclear steps provided for in the JCPOA. Through hard bargaining, we were able to ensure that UNSCR 2231 endorsing the

JCPOA extends arms- and missile-related restrictions for a significant period of time after the JCPOA takes effect.

Independent of the nuclear talks or any other issue, we have repeatedly called for U.S. citizens Saeed Abedini, Jason Rezaian, and Amir Hekmati to be returned to their families, and for Iran to work with us to locate U.S. citizen Robert Levinson. We will continue to raise these cases with Iranian officials. While the nuclear talks created the first opportunity we had to discuss these cases bilaterally, we have been clear that we have never and would never link these cases to the nuclear talks, not because these cases would complicate the negotiations, but because the fate of our detained and missing citizens should not depend on unrelated negotiations that may or may not have reached a successful conclusion.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARNER
FROM WENDY SHERMAN**

Q.1. Secretary Sherman, you have been involved in negotiating this deal, and can provide valuable insight into our partners' thinking and some of the discussions that took place, including about items that did not make it into the agreement. The JCPOA restricts uranium enrichment until year 15. After year 15, even though inspectors still have access to uranium production sites and centrifuge manufacturing, other than Iran's obligations under NPT—which they have violated repeatedly in the past—there is nothing that would constrain their enrichment.

Have there been discussions among negotiating partners about what steps might be necessary to keep Iran's enrichment contained after 15 years? If so, what might we see? If not, what provides the Administration the confidence to assess that no further action would be required?

A.1. Under the JCPOA, Iran has committed to never pursue a nuclear weapon. Under the agreement, Iran is constrained to using only its first generation IR-1 centrifuges to enrich uranium for the first 10 years. Iran will have the option after Year 10 to undertake a gradual development of its enrichment program, but it will be limited to enriching only up to 3.67 percent and constrained to a minimal 300 kg stockpile for another 5 years. These limitations are important to ensure that Iran's breakout timeline does not drop dramatically after Year 10. Importantly, the transparency measures under the JCPOA will ensure unparalleled insight into Iran's program. Certain transparency and monitoring measures will last for 15 years, others for 20–25 years, and some will last indefinitely, such as Iran's adherence to the Additional Protocol. After 15 years, should we suspect Iran is pursuing nuclear weapons, we would have the same options available to us then as we do today to prevent such an effort from coming to fruition.

Similarly, although the JCPOA does not limit enrichment after 15 years, U.S. nonproliferation policy has been and will continue to be to limit the spread of enrichment capabilities, and we would apply this standard to Iran's enrichment program. Similarly, the Nuclear Suppliers Group has a policy of strictly limiting enrichment-related transfers. While we would not want to speculate about the specific policies we would pursue after 15 years, we are

cognizant of the importance of addressing any Iranian enrichment at that time that is not consistent with a peaceful nuclear program. Non-nuclear weapon states generally have no need for uranium enriched above 5 percent, and they should be able to rely on the international market for nuclear fuel and enrichment, and on other nuclear supply mechanisms such as the IAEA Fuel Bank recently established in Kazakhstan. Enrichment above that level by Iran would raise concerns given Iran's past activities and would require a clear civilian justification.

Q.2. After Year 8 or when the IAEA reaches its Broader Conclusion that Iran's nuclear activity is exclusively for peaceful purposes, Iran's enrichment program is codified internationally. This would significantly increase the difficulty of making claims that Iran is enriching for the purposes of weaponization.

If Iran is given IAEA's Broader Conclusion, based on your experience raising issues on Iran's activities in the international community, what type of proof would be needed to support a claim that they are in pursuit of a nuclear weapon?

A.2. Based on the IAEA's past practice in other countries and the extent of Iran's nuclear program, we expect it will take a substantial number of years of applying the Additional Protocol and evaluating the full range of Iranian nuclear activities for the IAEA to reach the Broader Conclusion that all nuclear material in Iran is in peaceful activities. After this point, Iran's commitments not to seek, develop, or acquire nuclear weapons under the JCPOA, as well as under the NPT, will remain in place indefinitely, and are not affected by the IAEA's Broader Conclusion.

After the Broader Conclusion is drawn, or after Year 8, Iran's Additional Protocol (AP) implementation will continue. It will give the IAEA the tools it needs to investigate indications of undeclared nuclear material and activities in Iran, including any activities of a potential military nature. For example, under the AP, the IAEA must only provide 24 hours' notice prior to seeking access to a location, whether declared or undeclared, and the IAEA can seek access in as little as 2 hours or less in certain circumstances. Implementation of the AP will deter Iran from cheating by creating a high likelihood that such cheating would be caught early. Finally, the IAEA reviews the Broader Conclusion on an annual basis, such that it could be withdrawn if the IAEA is subsequently unable to verify that all nuclear material in Iran is in peaceful purposes. If any state is in possession of information regarding undeclared nuclear activities in Iran, that state can approach the IAEA at any point to share that information.

Finally, under the IAEA Statute the Director General must report to the Board of Governors if IAEA inspectors find that Iran has not complied with its safeguards obligations. The Statute provides for the Board to report to the U.N. Security Council any non-compliance that it finds to have occurred and call on Iran to remedy such noncompliance forthwith.

While we cannot specify all of the activities by Iran that would raise compliance concerns, we will continue to look for undeclared nuclear activities and other activities that would not be commensurate with a peaceful nuclear program, including enrichment not

supported by the needs of Iran's nuclear power and research reactors.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR HEITKAMP
FROM WENDY SHERMAN**

Q.1. Please provide more information on how the United States could calibrate the re-imposition of sanctions on a sector or a category of transactions if Iran violates the terms of the JCPOA and the United States chooses not to seek the full re-imposition of sanctions. Is there flexibility to re-impose some sanctions but not others in the case of incremental violations by Iran?

A.1. Yes. Under the JCPOA, we will retain a wide range of options to deal with significant nonperformance by Iran under the deal or more minor instances of noncompliance, and our ability to calibrate our response will deter Iran from violating the deal.

The United States has the ability to re-impose both national and multilateral nuclear-related sanctions in the event of nonperformance by Iran. In the case of U.N. sanctions, under U.N. Security Council resolution 2231, we could do so even over the objections of any member of the Security Council, including China or Russia. Additionally, we have a range of other options for addressing minor noncompliance. These include snapping back certain domestic sanctions to respond to minor but persistent violations of the JCPOA, and using our leverage in the Joint Commission on procurement requests. If we were to snap back domestic sanctions, the United States would have maximum flexibility to determine which sanctions to re-impose, taking into account relevant considerations including the circumstances surrounding Iran's noncompliance.

That said, this does not give us free rein to simply re-impose tomorrow our nuclear-related sanctions under some other pretext. Iran, as well as our international partners, would see this as an act of bad faith. In the end, if we decide to impose new sanctions, it will be important that we have a credible rationale for doing so. This has always been the case and will be no different in the future.

Q.2. The agreement says that "Iran has stated that if sanctions are reinstated in whole or in part, Iran will treat that as grounds to cease performing its commitments under this JCPOA in whole or in part." In other words, if the United States chooses to re-impose limited sanctions as part of a calibrated response to Iranian violations, Iran could choose to renege on some of its obligations or pull out of the deal. How does the Administration think about this dynamic and gauging the Iranian response to calibrated sanctions?

A.2. We have been clear with Iran that the sanctions relief in the JCPOA is contingent on Iran's fulfillment of its nuclear-related commitments. Moreover, we would not violate the JCPOA if we imposed sanctions on Iran for terrorism, human rights, missiles, or any other non-nuclear reason. We have been clear about this fact with Iran and the other P5+1 countries.

What we have committed to do in the JCPOA is quite specific: not to re-impose those nuclear-related sanctions provisions specified in Annex II to the JCPOA, contingent on Iran abiding by its

JCPOA commitments. All of our other sanctions authorities remain in place and are unaffected by the JCPOA. We have made it clear to Iran that we would continue to use and enforce sanctions to address its other troubling activities, including its destabilizing activities in the region.

With respect to the sanctions relieved pursuant to the JCPOA, we have made clear to Iran that should Iran violate its commitments under the JCPOA once we have suspended sanctions, we will be able to promptly snap back both U.S. and U.N. sanctions. Our EU colleagues have made clear their intention to do the same. In the event that there is an Iranian violation, we expect to have strong international support for sanctions, as evidenced by the broad international coalition that we have built in recent years in response to the Iranian nuclear threat. In the case of a violation on behalf of Iran, we are not precluded from sanctioning specific Iranian actors or sectors if circumstances are warranted.